1946.

File No. S-Bel- 1/46

Legal DEPARTMENT

'A' BRANCH

Subject:— Suit - Belgaum.

Civil Suit No 90 of 1946.

Siddappa Parsappa Kudichi of Ingli.

Vs

The Central Govt. of India.

Re: Tobacco - chewing - Exported to Goa - Demand for differential duty —

File No. S- Bel- 1/46.

Std. Sectt. Slip 24-B

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In the Court of the Civil Judge (Senior Division )
At Belgaum.

Regular Suit No. 90 of 1946.

1. Satteppa Parsappa Kudichi, age 35, caste Lingayat, Occupation trader residing at Ingli, Taluka Chikodi, District Belgaum ... ... ... ... ... ... Plaintiff.

A g a i n s t.

1. The Central Government of India, Delhi. .. . Defendant.

Claim Rs.200/-for court-fee.

"12275-10-0 for jurisdiction.

Plaintiff sues as follows:-

1. A sum of Rs.3935/- and another sum of Rs.8340/10/- in all Rs.12275/10/- have been levied on 5.12.1944 from the plaintiff illegally by the Central Excise Officers, Chikodi, Circle as per T.D.1 notices Nos. 18752/12 and 18753/13 dated 24.8.1943 by illegally detaining the plaintiff's tobacco worth Rs.40,000/- and illegally removing plaintiff's registers maintained by him under the provisions of the Central Excise and Salt Act 1944, In order to release the goods and the registers from such illegal and ultra vires attachment, the abovesaid sums had to be deposited in the Chikodi Sub-Treasury by the plaintiff under protest and the plaintiff sent a registered post card dated 5.12.1944 to the Range Officer, Ankli Range, in which the plaintiff intimated his protest in depositing the said amount and his intention to claim a refund of the said sum of Rs.12275-10-0 from the Collector of Salt Revenue, Bombay. The plaintiff accordingly made an application for refund on 28.2.1945 to the Collector of Salt Revenue Bombay who however refused to do so in March 1945. There was an illegal and ultra vires demand of the said sum of Rs.3975/- and Rs.8340/10/- in all Rs.12275/10/- in respect of two consignments of chewing tobacco which were sent to Goa via Castle Rock by plaintiff on his payment of the legal and

proper duty at one anna per lb. as demanded by the Sub-Inspector of Ankli, Central Excises under the provisions of the Tobacco (Excise Duty) Act 1943 under T.D.1 notices dated 2.7.1943 and 10.7.1943 issued by him to plaintiff, and after plaintiff's ~~xxxx~~ obtaining T.D. 1 permits in respect of the same, authorising the plaintiff to consign the goods to Goa via Castle Rock. The said illegal and ultra vires demand was made as per T.D.1 notices dated 24.8.1943 for the 2nd time on the same goods after the tobacco in the said consignments was sold and disposed off in Goa. It was admitted by the Central Excise Officers concerned both in the T.D.1 notices dated 2.7.1943 and 10.7.1943 demanding duty at one anna per lb. and the T.P. 1 permits referred to above, that the tobacco in the two consignments was chewing. Nay, even in the T.D. 1 notices dated 24.8.1943 under ~~xxxx~~which the sum of Rs.12275/10/- was demanded and recovered from plaintiff under coercion on 5.12.1944 it was not only admitted but also was not disputed that the tobacco in the said two consignments was chewing. Hence, under the Tobacco (Excise Duty) Act 1943, the demand and levy of duty at 6 annas per lb. for chewing tobacco was illegal and ultra vires, and the plaintiff being entitled to recover back the said amount by way of refund under Rule 79 of the Tobacco (Excise Duty) Rules, 1943, plaintiff made an application dated 28.2.1945 for refund to the Collector of Salt Revenue Bombay who however refused to give the said refund in his Order No. T.Ex.3-39/44 dated 7.3.1945. Being aggrieved by the said order of the said Collector, he appealed on his petition dated 6th June 1945 to the Central Board of Revenue, but without considering the various points of law raised therein, the Central Board of Revenue declined to interfere by their communication dated 22.6.1945 which was received by plaintiff on 28.6.1945. There has been no inadvertence, error or misconstruction on the part of the Sub-Inspector of Ankli which demanding duty at one anna per lb. nor was there any misstatement on thepart of the plaintiff as to the quantity of the tobacco in question. Hence, Rule 79 of the Tobacco(Excise Duty) Rules 1943 did not apply to the two tobacco consignments in

question in issuing T.D. 1 notices dated 24.8.1943 afresh to plaintiff . None of the Central Excise Officers has instituted any enquiry to the knowledge of the plaintiff in support of the case of the Central Excise Officers that the said tobacco was other than chewing and was liable to duty at six annas per lb. Hence both the demand and levy of Rs.12275/10/- being illegal and ultra vires, the plaintiff is obliged to file this suit for a declaration that the plaintiff is entitled to obtain a refund of the said amount from the Collector of Salt Revenue , Bombay.

2. Even supposing without admitting that Rule 79 applied the provisions of Rule 85 of the Tobacco(Excise Duty) Rules, 1943, should have been complied and unless this was done, the Sub-Inspector, Ankli had no jurisdiction to issue fresh T.D. 1 notices dated 24.8.1943 to plaintiff and hence, the said notice is illegal and ultra vires.

3. The cause of action for this suit arose when the Central Board of Revenue refused to make a refund of Rs.12275-10-0 by its communication dated 22nd June 1945 which was received by the plaintiff by 28.6.1945.

4. This being a suit for a declaration for which the plaintiff values the same at Rs.200/-, a court-fee of Rs.18-12-0 is paid and the amount for the purpose of jurisdiction and Vakil fee is Rs.12275/10/-.

5. This court has jurisdiction to try this suit as the cause ofaction arose within the special jurisdiction of this court.

6. Plaintiff, therefore, prays for a declaration that as the levy of duty of Rs.12275/10/- is illegal and ultra vires, plaintiff is entitled to obtain from the Collector of Salt Revenue, Bombay, a refund of the said amount with costs of this suit and such other relief to which plaintiff is entitled to.

7. A notice under S.80 C.P.C. is given to deft.and served on 20.12.1945.

February 1946.

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Detailed statement of the circumstances which led to the filing of the Civil suit No.90 of 1946, by Mr.S.P. Mudchi of Ingli against the Central Government.

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Mr. Bettyappa Parsappa Mudchi, a licensed tobacco wholesale dealer and holder of a private bonded warehouse licence at Ingli in the Belgaum District, cleared between the 3rd and 10th July, 1943, on payment of duty at the rate of one anna per pound, the marginally noted quantities of unmanufactured tobacco, on the dates shown against them as intended for chewing purposes. He exported these quantities to Goa under transport permits in form T.P.1 dated the 3rd July, 1943 and the 10th July, 1943, issued by the Sub-Inspector of Central Excise (now Range Officer) Ankli. As this tobacco could also be used for biri or snuff purposes for which duty was leviable at the rate of six annas per pound the rate then in force - the Inspector of Central Excise (now Circle Officer) Chikodi, issued a notice dated the 15th August, 1943, to Mr. Mudchi claiming payment from him of differential duty at the rate of five annas per pound amounting in the aggregate to Rs. 12,275-10-0 in respect of these consignments, within fifteen days from the date of receipt of the notice. The Range Officer, Ankli, also issued on the 24th August, 1943 (i.e. within the period of three months) regular demand notices in form T.P.1 to Mr. Mudchi claiming from him the aforesaid amount of differential duty. As Mr. Mudchi did not pay this amount the Circle Officer, Central Excise, Chikodi, sent a notice dated the 22nd March, 1944, calling upon him to make the payment. On the 22nd April, 1944, Mr. Mudchi submitted an appeal petition to the Collector of Central Excise, Bombay, through the Assistant Collector of Central Excise, Kolhapur, wherein he contended inter alia that the notices demanding differential duty from him were illegal and that the tobacco exported by him had been accepted by the Central Excise Officers as of chewing variety and therefore the notices of demand should be withdrawn. The Assistant Collector of Central Excise, Kolhapur, informed him on the 16th May, 1944, that his appeal can only be considered when he has paid the amount of duty demanded (Vide Section 189 of the Sea Customs Act, 1878, as made applicable to the procedure relating to appeals by section 12 of the Central Excises and Salt Act, 1944, read with Rule 215 of the Central Excise Rules, 1944). The Additional Collector of Central Excise, Bombay, informed Mr. Mudchi on the 23rd June, 1944, that the Circle Officer, Central Excise, Chikodi served notices of demand on him on the 15th and the 24th August, 1943, and that if he felt aggrieved by these notices he should have appealed against them to him (i.e. Collector) within three months from the 24th August, 1943, according to Section 35 of the Central Excises and Salt Act, 1944, and that as his appeal was dated the 22nd April, 1944, it was time-barred. Mr. Mudchi then sent a notice dated the 27th May, 1944, under section 80 of the Civil Procedure Code to the Central Board of Revenue, Simla, of his intention to file a suit against the Central Government in a court of law in order that any proceedings for recovery of the differential duty demanded from him may not be enforced. On the 18th July, 1944, Mr. Mudchi made a revision application to the Central Government against the decision of the Additional Collector of Central Excise, Bombay, communicated to Mr. Mudchi in his letter dated the 23rd June, 1944. In this he contended inter alia that the tobacco which he exported was of chewing variety and was described as such by the Range Officer, Ankli, in his demand notices in form T.P.1 dated the 24th August, 1943, under which he claimed payment of the differential duty at five annas per pound, and that the Collector had erred in not

| Quantities in pounds. | Date of clearance. |
|---|---|
| 12,592 | 3- 7-1943. |
| 26,690 | 10- 7-1943. |

not deciding the appeal on merits. He requested that the order demanding the differential duty might be sent aside. The Government of India, Finance Department (Central Revenues) rejected the revision application of Mr. Kudchi, on the 27th October, 1944, on the ground that the order passed by the Additional Collector was correct. As Mr.Kudchi had not paid the differential duty amounting to Rs.12,275-10-0 the AssistantCollector of Central Excise, Kolhapur, issued an order on the 30th November, 1944, under Rule 230 of the Central Excise Rules, 1944, for the detention of the balance of 45,520 pounds of unmanufactured tobacco in Mr. Kudchi's bonded warehouse and directed that Mr. Kudchi should not remove the tobacco until the amount of Rs. 12,275-10-0 due from him as differential duty, was paid. Mr. Kudchi then paid the amount of differential duty on the 5th December, 1944, in the Chikodi Sub-treasury. On the 26th February, 1945, Mr. Kudchi made an application to the Collector of Central Excise, Bombay, requesting that the amount of Rs. 12,275-10-0 paid by him be refunded to him. He contended that the demand for duty at a higher rate could not legally be made subsequently either under the Tobacco (Excise Duty) Act, 1943, or under the Tobacco (Excise Duty) Rules, 1943, since the Range Officer had assessed the tobacco as intended for chewing purposes and there was no error or inadvertence or misconstruction on his part in assessing this tobacco. I replied on the 7th March, 1945 that since the Government of India, Finance Department (Central Revenue) had rejected his revision application I could not accede to his request to refund the amount. He again sent to me an application dated the 5th June, 1945, for reconsideration of my decision conveyed to him in my letter dated the 7th March, 1945. I expressed to him my inability to do so in my reply dated the 12th June, 1945. He sent an application dated the 6th June, 1945, to the Central Board of Revenue against my letter dated the 7th March, 1945. In this application he contended that as he paid the amount of Rs. 12,275-10-0 subsequent to the order of the Additional Collector dated the 23rd June, 1944, and the order of the Government of India dated the 27th October, 1944, the Collector of Central Excise,Bombay, was not justified in rejecting his application for the grant of the refund of the amount. The Central Board of Revenue informed him in their letter dated the 22nd June, 1945, that the orders of the Government of India on his revision application No.14 of 1944, were final and could not be revised.

2. These circumstances seem to have given cause for the issue of a notice dated the 14th December,1945, to the Central Government under section 80 of the Civil Procedure Code, 1908, and the filing of the present Civil suit against the Central Government. However, before filing the Civil suit, Mr. S.G. Chandavarkar, advocate on behalf of Mr. Kudchi had sent a letter to me on the 9th February, 1946, enquiring whether I would agree to both the Central Government and his client being willing to abide by the ultimate result of the Civil suit filed by Mr. S.S.Kore of Ankli in a similar case against the Central Government in the Court of Civil Judge, Belgaum (vide your No.1137 dated the 9th February, 1946. I refused to accept this proposal in my telegraphic reply dated the 16th February, 1946, as this case was not on all fours with Mr.Kore's case.

Collector of Central Excise,
Bombay.

6 JUL 1946

PP:2. VK.3/7.

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The grounds on which it is proposed to base the defence and the dence to be adduced in Civil suit No.90 of 1946, filed by Mr.S.P.Kudchi of Ingli against the Central Government.

| Plaint. | Defence. |
|---|---|
| 1. The amount of Rs. 12,275-10-0 was recovered from Mr.S.P. Kudchi by illegally detaining his tobacco worth Rs.40,000/- and illegally removing his registers. | According to Rule 230 of the Central Excise Rules, 1944, when the duty leviable on any goods is owing from any person carrying on trade or business, as a dealer in such goods, all excisable goods etc. may be detained for the purpose of exacting such duty. As Mr. Kudchi did not pay the duty demanded from him under the notices in Form T.D.1 issued by the Range Officer, Ankli, on the 24th August, 1943, until the 30th November, 1944, inspite of reminders issued to him in the matter, the Assistant Collector of Central Excise, Kolhapur, issued an order on the 30th November, 1944, under Rule 230 of the Central Excise Rules, 1944, detaining the stock of 45,520 pounds of unmanufactured tobacco in balance in Mr.Kudchi's bonded warehouse and directing that Mr. Kudchi should not remove the tobacco until the amount of Rs. 12,275-10-0 due from him was paid. The registers in form W.R.G. 2 were taken from Mr. Kudchi for taking out extracts in respect of the balance of tobacco in stock with him, in pursuance of Rule 226(iii) of the Central Excise Rules, 1944. There was therefore nothing illegal in the detention of tobacco or the registers. |
| 2. The demand for the payment of differential duty amounting to Rs. 3,935/- and Rs. 8,340-10-0 in all Rs. 12,275-10-0 in respect of the two consignments exported to Goa was illegal as the tobacco in these consignments was chewing tobacco. | In his applications in Form T.W.C. 1 No.2 and 3 dated the 30th June, and the 9th July, 1943, for clearing tobacco from his bonded warehouse, Mr. Kudchi mentioned in the variety of tobacco in column No.6, as "Pendhi for chewing". "Pendhi" tobacco is capable of being used for "biri" or snuff purposes for which the rate of duty prescribed in the Tobacco (Excise Duty) Act, 1943, was six annas per pound. Mr.Kudchi's statement that the tobacco was a chewing variety was, therefore, a misstatement. The Range Officer, also through an error on his part accepted this statement and levied duty at the rate of one anna per pound instead of at the correct rate of six annas per pound. When subsequently he realised his mistake, he demanded the payment of duty short levied at the differential rate of five annas per pound under Rule 79 of the Tobacco (Excise Duty) Rules, 1943, read with Rule 2(iii) of the same Rules. The demands were thus legally made. |

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| Plaint. | Defence. |
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| 3. The demands for payment of Rs. 3,935/- and Rs. 8,340-10-0 were made after the tobacco was sold and disposed of in Goa. | Rule 79 of the Tobacco (Excise Duty) Rules, 1943, authorised the Central Excise officers to claim duty short-levied within three months from the close of the month in respect of which the duty was originally levied. This Rule does not prevent such a claim being made even if the tobacco to which it pertains has been sold or disposed of by the owner. |
| 4. The Central Excise Officers admitted by accepting his applications in form T.W.C.1 dated the 30th June, 1943, and the 9th July, 1943, that the tobacco in the two consignments was a variety for chewing purposes, and more so by mentioning in the notices in form T.D.1 dated the 24th August, 1943, against the column "variety" "chewing exported to Goa". | The tobacco in this case was one which is locally known as "Pendhi" tobacco. This tobacco can also be used for "biri" or snuff purposes for which the rate of duty prescribed in the Tobacco (Excise Duty) Act, 1943, was six annas per pound. The Range Officer, Ankli, through an error accepted the statement of Mr.Kudchi that it was for chewing purposes. He then rectified his error by issuing demand notices for the payment of the differential duty within the limit prescribed under Rule 79 of the Tobacco (Excise Duty) Rules, 1943. The mention of "chewing exported to Goa" does not represent the actual variety or the tariff classification of the tobacco to which the demand pertains. |
| 5. Mr. Kudchi made an application dated the 28th February, 1945, to the Collector of Central Excise, Bombay, who refused to grant the refund of Rs.12,275-10-0 paid by him. Being aggrieved by the Collector's decision, Mr. Kudchi made an appeal petition to the Central Board of Revenue who without considering various points of law declined to interfere with the Collector's decision. | Mr. Kudchi first made an appeal dated the 22nd April, 1944, to the Collector of Central Excise, Bombay, against the demand notices issued by the Range Officer, Ankli, for the payment of the duty short-levied. The Additional Collector of Central Excise, Bombay, rejected the appeal on the 23rd June, 1944, on the ground that it was time-barred. If h had felt aggrieved by these demand notices he should have sent his appeal against them to the Collector within three months from the 24th August, 1943, i.e. the date of the demand notices, according to Section 35 of the Central Excises and Salt Act, 1944. He then submitted a revision application to the Central Government on the 15th July, 1944. The Government of India, rejected this revision application. The decision of the Covernment of India was final. Thus Mr. Kudchi exhausted all the remedies prescribed by sections 35 and 36 of the Central Excises and Salt Act, 1944, against the demands for payment of the duty short-levied. As Mr. Kudchi did not pay the amount so demanded, the Assistant Collector of Central Excise, Kolhapur, issued an order under Rule 230 of the Central Excise Rules, 1944, for the detention of the balance of tobacco in his bonded warehouse with a |

a view to recovering the amounts due from Mr.Kudchi. Mr. Kudchi then paid the amount. Since this payment was in accordance with the decision of the Government of India on Mr. Kudchi's revision application, the payment cannot be considered as having been made through inadvertance, error or misconstruction on the part of Mr. Kudchi so as to fall within the purview of Rule 11 of the Central Excise Rules, 1944. So the question of granting any refund of these amounts to Mr.Kudchi did not arise. The Central Board of Revenue was therefore right in their refusal to interfere with the Collector's decision already communicated to Mr. Kudchi in his letter dated the 7th March, 1945.

6. There has been no inadvertance, error or misconstruction on the part of the Range Officer in demanding duty at one anna per pound nor was there misstatement on the part of Mr. Kudchi as to the quantity of this tobacco. Hence Rule 79 of the Tobacco (Excise Duty) Rules, 1943, does not apply.

Rule 79 read with rule 2(iii) of the Tobacco (Excise Duty) Rules, 1943, authorised any officer of the Central Excise Department to demand duty short-levied through error or misconstruction on the part of an officer or through misstatement as to the quantity on the part of the owner. In the present case, there was not only a misstatement as to the quality of the tobacco to be cleared, on payment of duty, on the part of the owner, but there was also an error on the part of the Range Officer, Ankli, in assessing the tobacco at the rate of one anna per pound. The Range Officer was, therefore, justified in making the demand for the payment of duty short-levied at the rate of five annas per pound under this Rule. No special inquiry was necessary.

7. None of the Central Excise officers instituted any enquiries to the knowledge of the plaintiff (Mr.Kudchi) in support of their case that the tobacco was other than chewing and was liable to duty at six annas per pound.

The Circle Officer, Chikodi, knew from experience that the "Pendhi" tobacco could also be used for "Biri" and snuff purposes, and therefore the consignment was ipso facto liable to the higher rate of duty.

8. Unless the provision of Rule 85 of the Tobacco (Excise Duty) Rules, 1943, were complied with, the Range Officer, Ankli, had no jurisdiction to issue demand notices for the payment of differential duty by Mr.Kudchi, under Rule 79 of the Tobacco (Excise Duty) Rules, 1943.

Rule 79 of the Tobacco (Excise Duty) Rules, 1943, gave power to a Range Officer to demand duty short-levied on his own initiative. This rule does not restrict the Range Officer's power to demand duty short-levied only to cases where duty short-levied was adjudicated by the Collector under Rule 85 of the Tobacco (Excise Duty) Rules, 1943. The duty demanded in the present case was duty short-levied and not increased duty. Rule 85 of the Tobacco (Excise Duty) Rules, 1943, does not lay down that the short-levied duty should be adjudged by the Collector before it can be demanded under..

under Rule 79 of the same Rules.

6 JUL 1946

Collector of Central Excise,
Bombay.

PP:2. VK.3.

The points on which it is proposed to defend the Civil suit No.90 of 1946, filed by Mr.S.P.Kudchi of Ingli against the Central Government.

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The marginally noted documents are tendered in support of the defence case. The points on which it is proposed to defend the suit are as under:-

1. Two applications in form T.L.C.1 bearing Ankli Range No.2 and 3 dated 30th June, 1943, and 9th July, 1943.

2. Transport permit in form T.P.1 A.14446/6, dated the 3rd July, 1943, issued by the Sub-Inspector, Ankli.

3. Transport permit in form T.P.1 No.A.14447/7, dated the 10th July, 1943, issued by -do-

4. Notice dated the 15th August, 1943, issued by the Inspector, Chikodi.

5. Demand notice in form T.D.1 No.12/18752, dated the 24th August, 1943, for Rs.3,935/-

6. Demand notice in form T.D.1 No.13 /18753, dated the 24th August, 1943, for Rs. 8,340-10-0

7. Notice dated the 22nd March, 1944, issued by the Circle Officer, Chikodi.

8. Appeal petition of Mr.Kudchi, dated the 22nd April, 1944.

9. Copy of letter No.T.Ex. 3-39, dated the 23rd June, 1944, from the Addl. Collector of Central Excise, Bombay, to Mr. S.P.Kudchi of Ingli.

10. Copy of notice under section 80 of the Civil Procedure Code, dated the 27th May, 1944, from Mr. S.P.Kudchi to the Secretary, Central Board of Revenue.

11. Copy of a revision application dated the 15th July, 1944, from Mr.S.P.Kudchi to the Central Govt. New Delhi.

12. Copy of the order of the Government of India on Central Excise Revision application No.14 of 1944, dated the 27th October, 1944.

13. Copy of order No.11-301, dated the 30th November, 1944, from the Asstt.Collector, Kolhapur to Mr. S.P.Kudchi.

14. Application dated the 26th February, 1945, from Mr.S.P. Kudchi, to the Collector of Central Excise, Bombay.

(1) The jurisdiction of a Civil court is barred as according to section 40 of the Central Excises and Salt Act, 1944, no suit shall lie against the Central Government in respect of any order passed in good faith or any act in good faith done or ordered to be done under the Act.

(2) The jurisdiction of a Civil court is also ousted in suits relating to revenue - vide please the Madras High Court decision C.S.No.378 of 1933 - Khan Bahadur H.M. and D.H.Bhiwandiwalla and Co., by its Agents V/s. the Secretary of State for India and Ganesh Mahadev V/s. Secretary of State for India (1918)/43, Bom.221 and Mahadev Ganesh Jamsandeker and others V/s. Secretary of State for India (ILR.46 Bombay, 732).

(3) The Range Officer, Ankli, who issued the demand notices in Form T.D.1 dated the 24th August, 1943, to Mr. S.P.Kudchi, claiming from

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|---|---|
| 15. Copy of this office letter No. T.Ex. 3-39/44, dated the 7th March, 1945, to Mr. S.P.Kudchi | him the payment of the duty short levied, held that the tobacco was properly assessable at the rate of six annas per pound instead of at the rate of one anna per pound as already assessed by him. These demands were therefore orders within the meaning of rule 86 of the Tobacco (Excise Duty) Rules, 1943 (now Section 35 of the Central Excises and Salt Act, 1944). |
| 16. Application dated the 5th June, 1945, from Mr.S.P.Kudchi to the Collector of Central Excise, Bombay. | |
| 17. Copy of this office letter No. T.Ex. 3-39/44, dated the 12th June, 1945, to Mr. S.P.Kudchi. | |
| 18. Copy of an application dated the 6th June, 1945, from Mr.S.P. Kudchi to the Central Board of Revenue. | |
| 19. Copy of letter C.No.31(11) C.Exc.(T)/45, dated the 22nd June, 1945, from the Secretary, Central Board of Revenue to Mr.S.P.Kudchi, | |
| 20. Copy of notice dated the 14th December, 1945, from Mr.S.G. Chandavarkar to the Central Government. | |
| 21. Letter dated the 9th February, 1946, from Mr.S.G.Chandavarkar to the Collector of Central Excise, Bombay. | |
| 22. Copy of a telegram dated the 16th February, 1946, from the Collector of Central Excise, Bombay, to Mr.S.G.Chandavarkar, | |
| 23. True copy of the plaint of Civil Suit No.90 of 1946, filed by Mr.S.P.Kudchi. | |

Collector of Central Excise,
Bombay.

6 JUL 1946

PP:2. MK.3/7.

1. This relates to the defence of Belgaum Civil Suit No.90 of 1946 filed by Mr. Satteppa Parsappa Kudichi against the Central Government for a declaration that the levy of differential duties on tobacco exported by him to Goa is illegal and ultra vires and for a refund of the amount of Rs.12275-10as.-0p. paid by him as such duties under protest.

2. The plaintiff who is a licensed wholesale dealer in tobacco and a holder of a private bonded warehouse licence, cleared between the 3rd and 10th July, 1943 certain quantities of tobacco intended for sale as chewing tobacco on payment of duty at the rate of one anna per pound. (vide item No.II(2) of the schedule to the Tobacco (Excise Duty) Act.X of 1943 now replaced by item No.9 (II) (2) of the schedule of the Central Excises and Salt Act, 1944). He paid this duty and exported these quantities to Goa under transport permits in the form T.P.1 dated respectively 3rd and 10th July 1943 issued by the Sub-Inspecter of Central Excise (now Range Officer) Ankli. As this tobacco could also be used for the purposes of biri and snuff it was liable to a duty at the rate of six annas per pound which was the rate then in force. Hence the Inspector of Central Excise (now Circle Officer) issued a notice dated 15th August 1943 asking the plaintiff to pay the differential duty at five annas per pound amounting in the aggregate to Rs.12275-10-0. in respect of these consignments. The Range Officer also issued on 24th August 1943 regular demand notices in form T.D. 1 asking the plaintiff to pay the aforesaid amount.

slip A

slip B

5. As plaintiff did not pay the amount, the Circle Officer sent another notice dated 22nd March 1944 demanding payment. On 22nd April 1944 the plaintiff made a petition of appeal to the Collector of Central Excise and Salt contending inter alia that the demand for differential duty was illegal because the tobacco exported by him had been admitted by

slip C

the Central Excise Officers to be of chewing veriety and that therefore he was not liable to pay a differential duty. On 23rd June 1944 the additional Collector of Central Excise informed the plaintiff that his appeal dated April 1944 was time barred under section 35 of the Central Excise and Salt Act 1944. On 15th July 1944 the plaintiff ~~paid~~ made a revision petition to the Central Government, New Delhi, contending that his appeal was in time, that the demand for differential duty was illegal and that therefore the orders passed by the Central Excise Officer should be revised. He was informed on 27th October 1944 that the order passed by the Additional Collector was correct and that the Government of India declined to interfere.

slip D

slip E

slip F

6. As the plaintiff had not so far paid the differential duties the Assistant Collector of Central Excise issued an order on 30th November 1944 under Rule 230 of the Central Excise Rules 1944 for the detention of the balance of 45520 pounds of unmanufactured tobacco in plaintiff's bonded warehouse and directed him not to remove the same until he had paid the amount of differential duty demanded from him. On 5th December 1944 the plaintiff paid the amount in the Sub-treasury at Chikodi. On 26th February 1945 the plaintiff made an application to the Collector of Salt Revenue for refund of the same amount reiterating the same grounds of objection. The Collector however informed him on 7th March 1945 that his request could not be granted. On 5th June 1945 the plaintiff again appliedtto the Collector for a re-consideration of his orders but the Collector declined to grant his request. The plaintiff also appealed to the Central Board of Revenue, Simla, on 6th June 1945 contending that since he had paid the amount subsequent to the order of the additional Collector dated 23rd June 1944 and the order of the Government of India dated 27th October 1944 the Collector of Central Excise, Bombay was not justified in rejecting

his application without considering the various grounds pleaded in support of the claim for refund. But the Central Board of Revenue however informed him in their letter of 22nd June 1945 that the orders of the Government of India were final and cannot be revised.

7. On 14th December 1945 the plaintiff gave notice of Suit under section 80 of the Civil Procedure Code and thereafter filed the present suit in the Court of the Civil Judge,Senior Division, Belgaum.

The facts in this Suit are similar to the facts in Belgaum Civil Suit 288 of 1945,+ except that in Suit No.288 of 1945 the plaintiff has asked merely for a declaration that the levy of differential duties on tobacco is illegal and Foreconsequential injunction whereas in the present Suit the plaintiff, having paid under protest, the amount demanded from him, there is the additional prayer for refund. With this difference, the questions of fact and law in both the Suits will be identitical. It seems therefore unnecessary to prepare a separate brief in this Suit. The defence of this Suit has been sanctioned by the Central Board of Revenue, Simla. This Suit may therefore be defended on the lines of the brief prepared in Belgaum Civil Suit No.288 of 1945.

+ Papers are first up. Pl. see the note thereon at p. 23-27 of those papers.

RJM
9/8/1946

AAR RR 9/8
A.S. AR 10/4

Please see if it is necessary to show the Collector, Bombay, I think that was done in the Belgaum suit (Oct 8/45). PC 13/8
Mr. Rege

Draft Written statement. 17 49-

Suit No. 90 of 1946.

In the Court of the Civil Judge,(S.D.), Belgaum.

1. S.P. Kudichi ... ... ... ... Plaintiff.

Vs.

1. The Central Government of India ... Defendant.

Claim Rs.-

Herein, the written statement of the defendant is as under:-

1. The allegations in the plaint, are not bona fide. Hence, they are denied in toto.

2. The suit being against the Central Government the authorities to be named as the defendant, must be the Governor-General in Council before the establishment of the Federation of India. The suit as framed is -- therefore, not maintainable.

3. The suit against the Central Government is expressly barred under Section 40(1) of the Central Excises and Salt Act, ( Act I of 1944), since the orders passed by the Excise Authorities, have been made in good faith.

4. The suit is time-barred under Section 40(2) of the Central Excise and Salt Act, 1944, having been instituted more than six months after the orders of the Collector of Central Excise, dated 7.3.1945, under the Act were made.

5. This court has no jurisdictinn to entertain the suit, since the order passed in appeal by the Board of Revenue is final under Section 35(2) of the Central Excises and Salt Act of 1944.

6. The defendant further submits that the tobacco in this suit, could also be used for the purpose of 'biri' or 'snuff' and was therefore liable to higher rate of duty at annas 6 per pound. Moreover, it having been exported to Goa and there in that case no --

possibility of checking the subsequent use, it was liable to be assessed at the maximum rate provided by law. Hence, the duty of one anna per pound, was short levied through inadvertance and error on the part of the Range Officer. In this case, there has been also a mis-statement and mis-declaration on the part of the Plaintiff as to the quality or variety of the tobacco in question to be cleared on payment of duty, which resulted in short levy. The Plaintiff is, therefore, liable to pay the differential duty under Rule 79 of the Rules of 1943. Hence, the action for recovery of the same under the said rules, was justified.

7. The plaintiffs's allegations in para 1 of the plaint, that the tobacco in question was admitted by the Central Excise Officers as being only for chewing purposes, are denied by the defendant.

8. The Plaintiff's contention in para 2 of the plaint, that Rule 79 is subject to rule 85 of the Tobacco Excise Duty Rules of 1943, is misconceived and untenable and therefore not admitted. Rule 85 provides for adjudication of confiscation and penalties. Rule 79 on the other hand, applies to cases in which an article assessable at a higher rate has, through inadvertenance, error etc., been assessed at a lower rate. Reference to Rule 85 is irrelevant.

9. If the duty was short levied, the mere fact that the tobacco was stated to be of chewing variety, will not debar Govt. from enforcing its statutory right under Rule 79.

10. The allegations towards the close of para 1 of the plaint, that the demand and levy of Rs.12,275/10/- is illegal and ultravires, is denied. The duty levied by Excise Officers is within the scope of Rule 79 of the Tobacco Excise Duty Rules of 1943, corresponding to Rule 10 of the Rules of 1944. Hence, the action taken by the said

officers is intra vires.

11. The action taken by the Central Excise Officers under the various orders in the [matter of the] case, [are] all legal and justified.

12. The plaint does not disclose any cause of action against the Central Government.

For these among other grounds, it is prayed that the suit [should] be dismissed with costs.

Belgaum,
Dated.

District Government Pleader,
Belgaum.

Exh.No.12. 3 6 1

Reg.Civil Suit No. 90 of 1946
under Special Jurisdiction.

Preliminary Issue.

1. Having regard to the allegation in the plaint that -- Rs.12,275-10-0 have been recovered, is the suit for a mere declaration of the illegality of the levy of the duty without a prayer for refund maintainable ?

12.12.1946. Sd.D.R.Ugrankar.

Civil Judge,Senior Division.

Heard Plaintiff's pleader Mr.B.H.Deshpande.

My finding is in the negative.

Having regard to the proviso to Section 42 of the Specific Relief Act, this Court cannot make a mere declaration as prayed for in para 6 of the plaint because the plaintiff is able to seek a further relief viz. that the amount of the duty of Rs.12,275-10-0 illegally recovered from him should be paid back to him by Defendant. There is no provision in the Act or the

Rules that a mere declaratory decree as prayed for has to obeyed by the Defendant. Therefore I hold that the Plaintiff must pray for the consequential relief of refund of the amount and pay Court fee thereon. The suit as in the present form cannot be entertained by this Court. I grant Plaintiff time upto 14.1.1947 to add such a prayer and pay Court fee thereon.

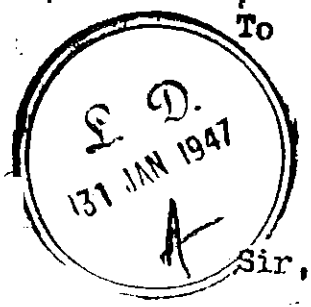
Sd.D.R.Ugrankar.

Civil Judge, Senior Division.

12.12.1946.

.....

NO.O.S.90/46. 23 5 61
Belgaum,30th January 1947.




To

The Collector of Belgaum.

Subject:-Suit No.90 of 1946:
S.P.Kudchi Vs.The Central Govt. of India.

Sir,

With reference to the above subject, I have the honour to report that I have been served with a notice to put in -- objections,if any, to the application filed by the plaintiff, for amendment of the plaint, today. I have sent the same herewith together with a copy of the application in question, for information, with a request to instruct me, as to whether any objections should be filed for the said amendment. The suit was fixed for filing the same today, and I have taken an adjournment for the same. I may kindly be instructed in this behalf at a very early date.

Your obedient servant,

District Government Pleader,
(P.T.O.)

1225
1/1-2-47

No.O.S.90/46.
Belgaum,30.1.1947.

Copy forwarded with compliments for information and giving necessary instructions, to:

1. Remembrancer of Legal Affairs,Bombay.

2. The Collector,Central Excise, Bombay.

~~District Government Pleader~~, Belgaum

1229
1-2-47

Submitted with pps (S Bel 4/46)
Pons
6-2
SMS

Please see the D.S.P.'s letter marked above and its enclosures. The Court held on a pre-issue that a suit for the declaration was not maintainable and that the plaintiff must seek the consequential relief of refund on payment of proper Court fees. It will be seen from paragraph 6 of the plaint (file p. 3) that the exact relief claimed by the plaintiff is for a twofold declaration (3)

that the levy of differential duty of Rs.12275/10/- is illegal and therefore (ii) the plaintiff is entitled to get a refund of that amount from the Collector of Salt Revenue. There was thus no prayer to the Court for relief for a refund of the amount, and it was for this reason that the Court framed the preliminary issue and held that the Suit was not maintainable under section 42 of the Civil Procedure Code. That being so, the proposed amendment is open to objection. The amount in question was recovered from the plaintiff on 5th December 1944. At the date of the amendment therefore the Suit for refund will be clearly time-barred under Article 16 of Schedule I to the Indian Limitation Act. The amendment would hence take away from Government, a right which accrued to it by lapse of time and cannot therefore be allowed. "

The D.G.P. may be informed accordingly.

RM
10/2/47

HSS.10/2.

A.L.R. 10/2

R.L.A.

97 Exn.No. 13 69

Spl.Juris. Suit No.90 of 1946.

Issues.

1. Is the suit barred under Section 40(1) of Act I of 1944 ?
2. Is the suit barred by limitation under Section 40(2) of Act I of 1944 ?
3. Is the jurisdiction of this court to try the suit barred by Section 35(2) of Act I of 1944 ?
4. Was the tobacco liable to duty at the rate of 6 annas per lb.? If so,
5. Is the Defendant's action in recovering the -- differential duty shown to be illegal and ultra vires ?
6. Is the plaintiff's allegation that the Central Excise Officers concerned admitted that the tobacco was of the "chewing" variety proved ?

7. Is the exercise of the power under Rule 79 subject to Rule 85 of the Tobacco(Excise Duty) Rules of 1943 ?

8. What reliefs, if any, is plaintiff entitled to ?

~~Exx What xxxxxxxxx?~~

No more sought.

Sd.D.R.Ugrankar.

30
~~22~~/1/1947. Civil Judge,S.D.Belgaum.

29 17 13

From:-
H.McClenaghan CIE., ICS.,
Collector of Central Excise,
Bombay.

To:-
The Remembrancer of Legal Affa
Bombay Castle, Bombay.

1454.

4/8.2-47

No.T-Ex- 3-39/44.
Bombay, the 5th February, 1947.

Subject:- Tobacco - Chewing - Exported to Goa - Demand for differential duty - Civil Suit against Central Governme by Mr.S.P.Kudchi of Ingli (Suit No.90 of 1946).

.....

Reference your letter No.5885, dated the 26th August, 1946.

.....

I invite a reference to letter No.O.S.90/46, dated the 30th January, 1947, addressed by the District Government Pleader Belgaum to the Collector of Belgaum, - a copy of which he has endorsed to you. You will see that the plaintiff's pleader has put in an application for amendments of the plaint. I will be glad to know whether there is any objection to the proposed amendment being allowed if so, whether any instructions to the District Government Pleader, Belgaum, are necessary. If so, I request that the necessary instructions may be issued to him.

H McC

Collector of Central Excise,
Bombay.

A 7/2

BS:3:2:
KG:5:2

1496 à 1514

8-2-47)

Submitted with hps (S. Rel 1'46).
2- Please see the orders passed by.
very. as slip J

Note
13-2-47).

S Hrs : Please see the order below dt. 10th Nov 1946 dt 10-2-47. There first hearing. Now the case has already allowed. No amendment. The Court's view that the amendment is formal does not appear to be correct. The S.D.P may interpose the withdrawal of the Notice dt 10-2-47. and also to move the Court for framing amendment issue whether the suit is repugnant to the Muslim-owned under Article 16.

DC 18/2
A.L.R
R.L.A

RLS
13/2

2744
A 63-47

No.O.S.90/46.
Belgaum,3rd March 1947.

From

B.V.Jakati,Esquire,LL.B.,
District Government Pleader, Belgaum.

To

The Remembrancer of Legal Affairs,
Bombay.

Subject:- Suit No. 90 of 1946:
S.P.Kudichi Vs.Central Govt.of India.

Sir,

With reference to the above subject, I have the honour to report as follows:-

That the above-named suit was fixed on the 28th February 1947 for lists of witnesses. The date of hearing is not yet known. The hearing of the suit may come off some time in April.

The Civil Judge in whose court the suit is pending, has already decided Suit No. 288 of 1945 filed by one Mr. More against the Central Government. The said suit was of a like nature. The question of facts and law involved being more or less of an identical kind. In the circumstances, it is apprehended that the decision of this suit also may go against the Central Government ~~in this suit also~~. It would, appear, therefore, to be -- inevitable and natural that the Judge having once formed a view in regards to the question of fact and law in the former suit, which was of a like nature, would also bring to bear the same view on the questions arising in this suit.

Thus, under the circumstances, it would be advisable to get the suit transferred to the file of the Joint Civil Judge, Senior Division, Belgaum. It may be -- necessary to move the District Judge in the matter of transfer under Sec.22 of the C.P.C.

I am awaiting instructions from you.

I have further the honour to state that I am in

in receipt of your memorandum dated 24.2.1947 regarding the putting in objections to ~~m~~ the amendment application made by the plaintiff in the suit. I shall accordingly put in the objections as instructed by you and move the court for the additional issue on the ground of limitation, a copy of which has been sent herewith for your information.

Your obedient servant,

District Government Pleader,
Belgaum.

2744
6-3-47

Submitted with pp (S. Bel 1/46)

Bel
10-3

SPS

Please see overleaf paras 2 and 3 of the D. S. P's letter which are self-explanatory. I do not think the ground given by the D. S. P. can be regarded as sufficient for transfer of the suit. For orders whether the D. S. P's proposal should be accepted

10/3/47

ACR, Will it not be possible to request the Civil Judge (Senior Division) to transfer the suit to his Court?

RC 11/3

SPS: The D. S. P was proposing an application to the Dist. Court for transfer under S 24 C.P.C. I suppose it is open to the Civil Judge Senior Division to transfer the suit to his file. D. S. P. may be requested to move the Judge accordingly.

ACR

The DYP, Belgaum may be instructed to make an oral request to the Civil Judge (Senior Division) to transfer the suit to his file to enable Court to have the benefit of the view of another Judge in the matter.

DK 15/3

R.L.A:

35 95

Suit No.90/46.

In view of the additional Written statement, Exh.24, I add the following issue:-

9:-Whether the suit for refund is barred by limitation ?

Sd.D.R.Ugrankar.

Civil Judge.S.D. 15.3.47

---

37 10

Exh.33.

Special Suit No.90/1946.

In the court of the Civil Judge, Senior Division,

B E L G A U M.

1. S. P. Kudachi ... ... Plff.

Vs.

1. The Governor General in Council ... Deft.

Herein the application on behalf of the plff. under order 12, Rule 4 is as under:-

The above suit is fixed for hearing on 20/6/47- The plff.in order to maintain his own case calls upon the deft. to admit the following facts:-

(1) Whether deft. admits that a Circular was issued about July 1943 by the Central Board of Revenue to all Central Excise Officers that tobacco of whatever description and liable to duty of even less than 6 annas per pound, should be levied with the duty of 6 annas per pound,if the said tobacco is exported out of British India.

(2) Whether deft. admits that it was on account of this circular that T.D.1 notices dated 24/8/1943 referred to in the suit were issued to the plff.demanding differential duty at 5 annas per pound.

Hence,it is prayed that the deft.may be ordered to admit the above facts in the interest of justice. The notice may kindly be served on the Govt.Pleader.

D.& P. by
Sd.B.H.Deshpande.
Pleader for Plff.

11/6/1947.

Notice to issue to the Govt.Pleader.

Sd.M.S.Bagali.
C.J.,S.D.

11/6/1947.

Rec. on 13/6/47
Sd/- B. V. Takali.
D. G. P. Bom.

.....

No.C.S.90/46.
Belgaum, 15th June 1947.

Copy forwarded with compliments for information and for giving instructions for giving in the replies to the querries put in by the Plff., to:

1. The Collector of Central Excise, Bombay.
2. The Asstt.Collector, Central Excise, Kolhapur.
3. The Circle Officer, Central Excise, Chikodi Circle.
4. ~~The Collector of Belgaum.~~ R.L.A. Bombay

2. It may please be noted that same querries were put in the suit by Mr.Kore to which answer in negative was given.

District Government Pleader.

7145
17-6-47
A

7145
17-6-47.

Submitted with p/s (S Bel 1/46:

P&S
17-6

A-S 17/6/47 The D.G.P may be requested to obtain instructions from the Collector Central Excise and Local central Excise Officers. Then Mr. has to submit to it

RE
17/6

ALR RE 17/6

R.L.A R
17/6

NO.O.S.90/46.
Belgaum, 4th October 1947.

To

The Collector of Central Excises,
Bombay.

Subject:- Suit No.90/46: S.P.Kudchi Vs.Central Govt.

Sir,

With reference to the above subject, I have the honour to report that the suit in question has been decided on the 29th September 1947. The order of the Court, runs thus:-"Suit dismissed Parties to bear their respective costs." A private copy of the judgment in the suit is sent herewith for information. The decree is not yet drawn, and hence, a copy thereof could not be sent now. The same along with the Bill of fees and expenses will be sent later on. The papers excluding those produced in court also will be sent along with the copy of the decree.

2, Please acknowledge receipt of the copy of judgment sent herewith.

Your obedient servant,

District Government Pleader.

Copy together with a copy of judgment, for information, forwarded with compliments to:

1. The Collector of Belgaum.
2. The Remembrancer of Legal Affairs, Bombay

12367
10-10-47

Submitted for information

2 Avant copies of Judgment & Decree.

Belgaum Civil Suit No 80 of 1946
has been dismissed. The Plaintiff
filed an appeal & limitation
& other issues & has
succeeded against the Civil
Suit. Hence the Civil Suit is
allowed with costs. No further
order is necessary

ALR 15/10

RLA R 15/10

41

Received on 22.2.1946.

Registered on 22.2.1946.

Decided on 29.9.1947.
Y.M.Days.
Duration-1-7-7.

IN THE COURT OF THE CIVIL JUDGE , SENIOR DIVISION,

AT BELGAUM. Exh.89.

Pleaders.

Mr.B.H.Deshpande & S.G.Chandavar-kar.

1. Sattayya Parsayya Kudichi,age 35,caste, Lingayat,occu.Trader,residing at Ingli, Tal.Chikodi,Dist.Belgaum. ... ... ... Plaintiff.

Against.

Govt.Pleader.

The Central Govt.of India,Delhi,i.e.The Governor-general in Council ... ... ... Defendant.

Claim- Rs.12275-10-0 for both.

The plaintiff sues to recover a sum of Rs.12,275-10-0 and costs of suit from the defendant,alleging as follows:- The plaintiff is a dealer in tobacco. He sent two consignments of chewing tobacco to Goa via Castle-Rock in July 1943 on payment of the legal and proper duty at the rate of one anna per lb. as demanded by the Sub-Inspector at Ankli Central Excises. Thereafter on 24.8.1943, the said officer issued a demand notice for payment of duty at the rate of 6 annas per lb. and ~~forwarded-file~~ followed up the demand by illegally detaining plaintiff's tobacco worth Rs.40000/- and illegally removing the plaintiff's registers maintained under the provisions of the Central Excises and Salt Act, that the plaintiff paid in all Rs.12,275-10-0 under -- protest and got back his tobacco which was detained and his registers which had been seized, that the plaintiff made an application for refund of the duty illegally recovered from him/ to the Collector of Salt Revenue,Bombay on 28.2.1945 but the said Officer refused to do so in March 1945, that thereafterthe plaintiff approached the Central Board of Revenue,Delhi with a demand for the refund of the money that he was informed that the Board declined to interfere. Hence the suit. ( The suit as originally framed was for a mere declaration that the levy of tobacco duty of Rs.12,275/10/- was illegal and ultra vires and that the plaintiff was entitled to a refund of the said sum from the Collector of Salt Revenue,Bombay.But subsequently,

it was amended and the amount claimed and ad valorum court-fee paid).

The Central Govt. in its written statement,ex.9,given before the amendment of the plaint,contends that the suit was barred under Sec.40(1) of the Central Excises Act,and Salt Act (Act I of 1944) since the orders passed by the Excise authorities were made in good faith, that the suit was barred by the law of Limitation under s.40(2) of the Central Excises and Salt Act 1944, in as much as it has been instituted more than 6 months after the date of the orders passed by the Collector of Central Excises, dated 7th March 1945, that the court has no jurisdiction to entertain the suit since the order passed in appeal by the Board of Revenue was final under s.35(2) of the said Act, that the tobacco in suit could also be used for the purpose of making biris or snuff and was therefore liable to a higher rate of duty at annas 6 per lb, that the tobacco having been exported to Goa and there being no facility or possibility of checking its ultimate use, it was liable to be ~~chargd~~ assessed at the maximum rate provided by law. Hence, the duty of one anna per lb.was short-levied through inadvertance and error of judgment on the part of the Range Officer, that the plaintiff was also guilty of misstatement and misdeclaration regarding the quality of tobacco and the uses to which it can be put,that the plaintiff was, therefore, liable to pay the differential duty under rule 79 of the Rules of 1943, that the action of the officer of the Central Excises was legal, that the plaintiff has no cause of action and that the suit should be dismissed with costs.

An additional written statement was filed at ex.24 after the plaint was amended in which the defendant contends that the money was recovered on 5.12.1944 and that the claim for its recovery was barred under Art.16 of the Indian Limitation Act. The following issues were framed at ex.20 by my predecessor,Mr.D.R.Ugrankar.

Issues.

(1) Is the suit barred under s.40(1) of the Act I of 1944?

43 111

(2) Is the suit barred by limitation under s.40(2) of the Act I of 1944 ?

(3) Is the jurisdiction of this court to try the suit barred by Sec.35(2) of Act I of 1944?

(4) Was the tobacco liable to duty at the rate of 6 annas per lb.? If so,

(5) Is the defendant's action in recovering the differen-tial duty shown to be illegal and ultra vires ?

(6) Is the plaintiff's allegation that the Central Excise Officers concerned admitted that the tobacco was of the Chewing variety proved?

(7) In the Exercise of the power under rule 79, subject to rule 89 of the Tobacco Excise Duty rules of 1943 ?

(8) What reliefs, if any, is plaintiff entitled to?

The following issue has been subsequently added, in view of the amendment of the plaint and the additional statement put in by the defendant.

(9) Whether the suit for refund is barred by limitation?

Findings.

(1) No. (2) Yes. (3) No. (4) Not proved. (5) The action was not justified by law. (6) The Excise Sub-Inspector accepted the declaration made by the plff. that the tobacco was of the chewing variety and levied duty accordingly. (7) Yes. (8) As the claim is held to be barred by the law of limitation, Plff. is not entitled to any relief. (9) Yes.

Reasons.

Briefly stated, the facts of the case are as follows: The plaintiff is a tobacco merchant of Ingli in Chikkodi Taluka. On 30.6.1943 and 9.7.1943, he made applications in T.R.C.I.Forms to clear tobacco from his warehouse at Ingli. (Vide exhs.45 & 46) One Mr.G.N. Naik was the Sub-Inspector of Central Excises, at Ankli at the dates of the applications. He has been examined at ex.80. The village of Ingli came within his Range. The two applications have been filled in by the Sub-Inspector himself. The applica-tions are in tabular forms printed in English. The details

of the first application are as follows; The total number of packages were 70 and the total weight of the packages, 13431 pounds. The head note to column no.5 reads "Variety of tobacco" In that column the words "Pendhi for chewing" have been written. The net weight of the tobacco is given as 12598 lbs. and the approximate price at Rs.3000/-. The rate of duty is stated to be one anna per lb. and the total duty, Rs.787/-. The plaintiff has made a declaration below the application to the effect that the above particulars are true. There is a note below the form of the application to the effect that the particulars are to be entered by the owner or his authorised agent in words and figures. Plaintiff states in his deposition at ex.77 that as the forms were in English which language he did not understand, he requested the Sub-Inspector himself to fill them in. The latter admits this fact in his deposition at ex.80. As the Sub-Inspector was not the authorized agent of the plaintiff, he should not have himself filled in the forms. There was no objection to give information and advice but it was wrong on the part of the Sub-Inspector to have himself filled in the forms of the applications for the plaintiff. The Sub-Inspector has made the assessment of duty at the rate of one anna per pound and directed the plaintiff to pay Rs.787/- in the Sub-Treasury at Chikkodi, within ten days. Accordingly, the plaintiff made the payment on 3.7.1943. The only difference in the first and second applications is the number of packages, the weight of the tobacco and the amount of duty to be paid. The second consignment consisted of 70 packages; the total weight of the tobacco was 26,690 lbs. and the duty Rs.1666-8-0. The rate is the same as well as the variety or quality of the tobacco. The plaintiff paid the duty on 10.7.1943.

Plaintiff applied to the Sub-Inspector, Ankli Circle for issuing permits for the transport of the tobacco to Madgav in Goa Territoty (Vide exhs.47 & 48). The necessary permits were issued on 3.7.1943 and 10.7.1943 respectively. The consignments were to be sent to Madgav by rail from Ghodhal station Via Londha. In both the permits the

45 - A3

the variety of the tobacco was described as " Pendhi for chewing". On the strength of this permit, the plaintiff sent the goods to Madgav where they were sold, through some -- commission-agent. Then on 15.8.1943, the Inspector,Central Excises, at Chikodi sent a memo to the plaintiff in these words:- " On examining the records of the S.I.Ankli, it has been found that a sum of Rs.12,275/10/- has been short-levied in respect of the following consignments of unmanufactured tobacco exported by you to Goa.

| Quantity of tobacco. | Amount ofduty. Paid at 0-1-0 per lb. | Date on which paid. | Differen-tial amt. now to be recovered |
|---|---|---|---|
| 18592 lbs. | 787/- | 2.7.1943. | 8925-0-0. |
| 266901bs. | 1668/2/- | 10.7.1943. | 8340-10-0 |
| | | | 12275-10-0 |

I, therefore order you to pay the above amount of -- Rs.12,275/10/- within 15 days from the date of receipt of the notice" (Vide ex.49). On 24.8.1943, the S.I. of Ankli, the same person who had assessed the tobacco at the rate of one anna per lb., sent formal notices of demand to the plaintiff and called upon him to pay the money on or before 3.9.1943. (Exhs.51and 50). Plaintiff ~~xxxxxx~~ failed to pay the amount as per demand notices for a period of about six months. Then the Circle Officer,Central Excises, Chikodi , issued a notice to the plaintiff on 22.3.1944 calling upon him to pay the -- differential duty within ten days of the date of the notice and informed him that steps will be taken for the recovery of the money as arrears of land revenue, Under Sec.12 of the Tobacco Excise Duty Act,1943, and default (ex.52). The plff. made an application to the Assistant Collector of the Central Excises and Salt Revenue, Kolhapur, The said officer has been wrongly designated in the application as Collector,on 22.4.44, requesting him to order the withdrawl of the notice on the ground that the demand for payment of differential duty was illegal and ~~xxx~~ ultra vires(Ex.53). It appears that the plff. had sent a similar application to the Inspector himself at Chikodi who had issued the notice(ex.52) on 8.4.44,which was forwarded by him to the Asstt.Collector at Kolhapur.

latter replied to the plaintiff's pleader on 18.4.1944 to put up a regular stamped appeal after paying the differential duty against which the appeal is intended as required by Sec.189 of the Indian Sea Customs Act (VIII of 1878), the provisions of which have been extended to appeals under the Tobacco(Excise Duty) Act,(Vide Ex.74). To ex.53, the Asstt.Collector sent a reply on 17.5.44 in the following terms:- " Your appeal regarding the fact whether the recovery of duty was justifiable or not, will be gone into after you pay the amount of duty demanded. If you do not pay the duty within 10 days from the date of receipt of this notice, arrangements will be made to recover the same as arrears of land revenue." (ex.76).

It appears that the plff. made a formal appeal to the Collector of Central Excises, Bombay, against the demand for payment of differential duty, but he was told that it was not in time. Here is the reply, he got."I find that the Circle Officer, Chikodi Circle served notices of demand on you on the 15th August 1943 and the 24th August. If you felt aggrieved by these notices, you should have appealed against them to me within three months, from the 24th August 1943, According to section 35 of the Central Excises and Salt Act(I of 1944). As your appeal is dated 28nd April 1944, it is time-barred." (Ex.54) Then plaintiff sent a revision application to the Central Government on 15th July 1944(ex.55). The Central Govt, replied to the effect that: " The order passed by the Addl Collector was correct and Govt.of India declined to interfere.2 (Vide ex.56). On 28.11.1944, the Asstt.Collector at Kolhapur issued an order for the recovery of the amount of Rs.12,275/10/- as an arrear of land revenue (ex.57). Thereafter, certain tobacco belonging to the plff. was detained and the registers taken possession of by the local Officers of the Central Excises. Plff. sent a notice on 2.2.1945 to the Range Officer,Ankli, informing that he would produce the money under protest and claim refund by taking legal steps (ex.88). He deposited the money in the Sub-Treasury at Chikodi on 5.12.1944(ex.67 & 68).

Plff. again made an application to the Collector of Excises and Salt Revenue on 26.2.1945 and asked

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for refund (ex.58).The Collector replied on the 9th March 45. (Invite your attention to the order dated the 27th October 1944 from the Govt.of India, Finance Department, rejecting your revision application as you have exhausted all remedies prescribed by Sec.35 and 36 of the Central Excises and Salt Act,1944,against the demand for differential duty amounting to Rs.12,275/10/- paid by you on the 5th December 1944, I regret that I cannot accede to your request to refund this amount to you " (ex.59). The plaintiff sent another application to the Collector on 5.6.1945 asking for reconsideration of his reques for refund(ex.60). His request was turned down on 12.6.1945 (ex.61). Then plaintiff sent a memorial to the Central Govt. through a pleader of Chikodi(ex.62). Govt. replied that the orders passed on your Revision application No.14 of 1944 are final and cannot be reversed"(ex.63) Plaintiff then gave notice of suit under Sec.80 of the C.P.Code on 14.12.1945 (ex.64). The notice was accepted and acknowledged by the Secy.Central Board of Revenue (exx.69 & 70).

The suit was actually filed on 22.2.1946. The prayer made in the plaint as originally filed was"for a declaration that, as the levy of the duty of Rs.12,275/10/- is illegal and ultra vires, plaintiff is entitled to ~~xxxxxxx~~ obtain from the Collector of Salt Revenue, Bombay, a refund of the said amount with costs of this suit." My predecessor framed a preliminary issue regarding the frame of the suit Vide ex.12. The preliminary issue reads as follows;-"Having regard to the allegaation in the plaint that Rs.12,275/10/- have been recovered, is this suit for a mere declaration of the illegality of the levy of the duty without a prayer for refund maintainable". He recorded a finding in the negative on 12.12.1946 and granted time till 14.1.1947 to amend the plaint, by adding a prayer for refund of the money and pay courtfee therson. Plaintiff actually gave an application on 22.1.1947(ex.15). It was allowed by the court and the plai was accordingly amended on 30.1.1947.

I first take up for consideration issue No.4.The duty

has been levied in the months June and July 1943. At that time, Act No.10 of 1943 was in force. Sec.3 of the said Act reads as follows:- " There shall be levied and collected in such manner as may be prescribed duties of excise, as and at the rates set forth in the schedule on all cured tobacco in British India on the 1st day of April 1943, on all tobacco cured in British India on or after that date and on all tobacco products mentioned in the schedule and manufactured in British India on or after that date." The schedule is divided into three parts viz.(1) Virginia tobacco (2)country tobacco (3) stacks,stems and other refuse of tobacco. It is common ground that the plaintiff's tobacco came under the second head, i.e. country tobacco. This head is again sub-divided into three sub-heads, as below:-

Country tobacco.

(I) If intended for manufacture into:-
(a) Cigarettes ... 0-6-0 per lb.
(b) Bidis .. 0-6-0 per lb.
(c) Cigars or Cheroots 0-2-0 per lb.
(d) Hookah tobacco 0-1-0 per lb.
(e) Snuff 0-6-0 per lb.

(II) If intended for sale as chewing tobacco manufactured or merely cured ... 0-1-0 per lb.

(III) If intended for any purposes.. 0-6-0 per lb.

It is under sub-head (II) that the Sub-Inspector charged the duty upon the tobacco in question. The plaintiff made a declaration in his application (ex.45 & 46) that the tobacco was intended to be sold as chewing tobacco. The S.I. himself has made the entries in the form of the applications in the plaintiff's godown at Ingli. He saw, as he must have seen the tobacco before making the entries. He accepted the declaration made by the plaintiff as true and correct and accordingly levied duty at the rate of 0-1-0 per lb. He also issued permits for the exporting of the tobacco to Madgav in which also he described the tobacco as Pendhi tobacco intended for chewing (exx.47 & 48). He states in his examination-in-chief at ex.80, "Two months after the permits were issued, the Inspector came from Chikkodi for inspection work and pointed out that the tobacco in question should have been charged with duty at the rate of six annas per lb.as it was intended

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and could be used manufacturing Biries and snuff. I then issued notices for payment of differential duty regarding the same tobacco(exx.67 &68). It is clear from this that the move has come from the Inspector who has not seen the tobacco and not made any inquiry about the intended use of the same. In his cross-examination, the S.I. states as follows:-" The process for preparing pendhi tobacco is that the tobacco after it is cut is dried up in the sun for 10-12-days and then it is buried in a pit for 3/4 days. It i is then taken out and the bigger stems are removed and the leaves tied up into bundles. Accordingly to me, pendhi tobacc if crushed and powered is called Jarda. According to me, any quantity or variety of tobacco can be used for chewing. The duty for country tobacco if intended for sale as chewing tobacco whether manufactured or merely cured is one anna. The duty on country tobacco if intended for manufacture into Biries and snuff, is six annas per lb. The difference in the duty is in the intention and not in quality. I did not then know what use the plaintiff was going to make of this tobacco. He told me that he was intending to sell it as chewing tobacco. There was no reason for me to disbelieve him at that time. The tobacco was sent to Goa. I do not know what use was going to be made of that tobacco at Goa. According to me, the duty to be chargedon tobacco of any quality is six annas. I cannot say why different rates have been described by the Schedule".

I do not think that this statement can be regarded as either satisfactory or convincing. The Inspector who set the ball in motion is examined at ex.88. His testimony according to me, was mere unsatisfactory and unconvincing, than that of the S.I. In his examination -in-Chief, he states " The Pendhi tobacco now shown to me is capable of being used for biris and snuff. It is incorrect to say that it is used for chewing only..... I told the S.I. that the tobacco in question should have been charged at the rate of six annas per lb. as pendhi tobacco could be used for manufacturing biries and snuff and that as it was sent into Goa to

it could not be followed up. " In his cross-examination,he states:-" The tobacco that has been taxed by the S.I. was Air-cured country tobacco. As such, it fell under sub-head II of the Schedule. It is for the whole-sale licensee to state or disclose the intended use of the tobacco. The Range Officer (i.e. S.I.) is not bound to accept the declaration as correct. As tobacco as such can be used for all purposes, it is incumbant on the Range Officer to weight the plus and cons of the declaration and decide for himself as to whether the tobacco to be cleared was intended to be used for the purposes for which the declaration is made. I do not know what use was made of this particular tobacco in Goa territory. No inquiry has been made on this question because, it could not be made in Goa territory. I do not know whether people in Goa territory chew tobacco. All kinds of tobacco can be used for chewing purposes. The following are the tests according to me to determine the duties to be levied on the tobacco: (1) to consider the inherent qualities of the tobacco. (2) the fact that the tobacco in question can be put up for more than one purpose, (3) the actual use. Thbacco of like quality is being put into use by the class of consumers in the place where the tobacco is intended to be sent.
(4) the possibility or otherwise of following up the eventual use if the declaration is accepted. This I say from my own experience. There are no rules on the point,of which I know. "

To put in mildly, all this is simply bobal. There is absolutely no justification from what the witness has stated.The duty is levied when applications are made to clear the tobacco from the ware-house. There is nothing in the forms of the application or anywhere in the Act or rules which make it compulsory on the part of the owner of the tobacco to mention at that stage, the destination to which he would send the goods. It is only when he asks for a permit for the transport of the goods-and this is given after the duty is paid - that he is required to state the place where he intended

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to send the tobacco. It is in the permits/where the intends-to that the place send-the tobacco is to be sent, is mentioned(ex.47 & 48), and not in the applications to clear the tobacco from the warehouse(ex.45 & 46). If, according to the witness, any quality of tobacco can be put to any use, that is for preparing biries or snuff, or merely for chewing, the firsttest mentioned by the witness will be rendundant. The second test is meaningless in as much as any kind of tobacco can be put to any use. The third test regarding actual/ user, is impracticable and -- impossible of being applied in practice. It may be that one man uses the tobacco for chewing, the other for making biries and third for manufacturing snuff. How is the wholesale dealer to know or anticipate or control the ultimate use of the tobacco. The further test is absolutely unwarranted. There is nothing in the Act or the Rules which empowers the Excise Authorities to follow up the tobacco and ascertain what actual use the tobacco on which duty has been paid as per demand has been put. It is possible that the tobacco might change hands more than a dozen times before it is actually made use of. Are the Excise Authorities to run from one place to another, from one corner of the country to another and even to foreign territories and find out the ultimate user ? There was no ban to export tobacco to Goa. Plaintiff has exported it under permit granted to him by the Excise authorities.

In my opinion, the words ' if intended for sale as chewing tobacco, whether manufactured or merely cured ' which occur in the schedule signify the intention of the owner of the tobacco. In this case, the plaintiff has made a declaration that the tobacco which he wanted to clear from his warehouse was intended By him to be sold as chewing tobacco. The S.I. who was present on the spot and had an opportunity to inspect tobacco, accepted the said declaration as true and correct. As stated by him, there was no reason for him to disbelieve the declaration made by the plaintiff. The plff. who is examined at ex.77, states that he did sell the tobacco to a comission agent at Goa as chewing tobacco. There is no reason to disbelieve him. The deft. has not proved that, as

a matter of fact, the tobacco in suit was put to any other use. If what the Inspector D'Souza and the S.I.Naik state is to be accepted, then all the tobacco whatever is variety or quality or whatever use it is put or intended to be put,will have to be charged at a flat rate and that too the maximum rate mentioned in the schedule. That is neither the letter nor the spirit of the law. It clearly makes distinction between three varieties of tobacco, viz., (1) Virginia,(2) country and (3) Stacks,stems and other refuse of tobacco. Then, the rates of duty vary under each head according to the intention of the user or manufacturer regarding the use to which the tobacco is to be put. By fixing different rates of duty for different varieties of tobacco and making the duty vary according to the intended use of the same, the Legislature has shown it-s intention that different rates of duty should be applied to different varieties of tobacco and to different intentions to which it is to be put.

I think the declaration made by the owner of the tobacco who applied under rule 14 of the rules of 1945 for a permit to clear the tobacco regarding the intended use of the tobacco, will have to be accepted under unless it is shown that it was not bona fide or manifestly false. The deft. in this case has entirely failed to satisfy the court that the declaration made by the plaintiff was mala fide or false. There is no rule that all tobacco sent to Goa,whatever its intended use may have been, should be assessed at the maximum rate at six annas per lb. When once the duty has been paid, the question of destination of the tobacco is immaterial. When the application for clearance was made, the tobacco was in Pendhi form. There is a certain process for preparing the Pendhi tobacco. I am not inclined to believe the S.I.Naik and the Inspector D'Souza, when they state that Pendhi tobacco can be used for any purpose. I am inclined to the view put forth by the plaintiff and his two witnesses, exx.78 & 79, that Pendhi tobacco is specially prepared for chewing purposes and that it is generally used for that purpose. The colour of the Pendhi tobacco is blackish while that of the Jarda is redish. That is clear from the samples

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produced by either side in court. The two witnesses from Kothali examined on behalf of the defts.exx.82 & 84, appear to have been procured by the Inspector D'Souza to

up the case made by him. It has been observed in Emp. V. Kadarbhai (29 Bom.L.R.987) that fiscal statutes must be strictly construed and the interpretation most favourable to the subject ought to be adopted.It is significant to note that at no time before the w.statement in the suit was put in has any official of the defendant informed the plaintiff the reasons for the demand for duty at the enhanced rate of six annas per lb. In the memo which the Inspector sent to the plff. on 15.8.1943, he simply states that the duty has been short-levied(ex.49). It is neither fair nor just on the part of the Govt.to demand duty at a rate six times the duty originally levied, after the goods have been sold on the basis that the duty charged was at the rate of one anna,unless it proves fraud on the part of the plaintiff, or collusion between the officer concerned and him or some such dishonourable conduct on his part. On the whole,I hold that the duty already charged, i.e. one anna per lb. was the proper duty. I record my finding in the negative on issue No.4. My finding on issue No.6 is in the affirmative in as much as the S.I. accepted the declaration made by the plaintiff in the applications, exx45 & 46, that the tobacco in question was intended for chewing.

I now take up for consideration the questions of limitation and the bar of the suit, i.e. question of jurisdiction. Plff.'s suit, as amended, is for the recovery of money paid by him under protest. He has said clearly in his notice, ex.88, dated the 2nd December 1944, that he was producing the money under protest and will take steps to recover the same. His suit therefore comes within the perview of art.16 of the Limitation Act. The said art. reads as follows:-

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| Against the Govt. to recover money paid under protest in satisfaction of a claim made by the Revenue Authorities on acct.of arrears of revenue or on account of demand recoverable as such arrears. | 1 year. | When the payment is made. |

Under sec.18 of Act X of 1943, the tobacco duty is

recoverable as an arrear of land revenue. The Central Excise Officers charged with the duty of collection the duty under the Tobacco(Excise Duty) Act of 1943 or Act No.I of 1944, certainly come under the definition of Revenue Authority. I, therefore, hold that the suit governed by the Art.16 of the Limitation Act. In this case, the plff.has paid the money on 5.12.1944. He has filed the suit on 22.2.1946. Under sec.15(2) of the Limitation Act, the period of notice under sec.80 of the C.P.Code, shall have to be excluded in computing the period of limitation. So, the last date for filing the suit was 5.2.1946. It is obvious that the suit filed on 22.2.46 is clearly barred by the law of limitation. Plff.'s learned Pleader has not drawn my attention to any other article of the Limitation Act by which the claim is governed. The learned Govt.Pleader relied upon the provisions of sec.40(2) of the Act I of 1944 and argued that the suit was barred as it has not been instituted within six months from the date of the act or order complained of. Clause 2 of sec. 40 reads as follows:- "No suit,prosecution or other legal proceeding shall be instituted for any thing done or ordered to be done, under this act, after the expiration of six months from the accrual of the cause of action, or from the date of the act or order complained of. "

Act No.X of 1943 was completely repealed by Act No.I of 1944. The latter Act came into force on the 28th February 1944. Sec.39 of Act No.I of 1944 reads as follows:-"The enactment specified in the Third schedule are hereby repealed to the extent mentioned in the fourth column thereof. But all rules made,notifications published, licences,passes,or permits granted,powers conferred and other things done under any such enactment and now in force,shall so far as they are not in-consistant with this Act, be deemed to have been respectively made,published,granted,conferred or done under this Act." In this case, the first order for payment of -- differential duty was passed by the Inspector on 15.8.1943.(ex.49). after that order,the Sub-Inspector sent demand notices on24.8.43, (ex.67 & 68).Plff.gave his reply to the order passed by the Inspector on [illegible](ex.66). Thereafter, for about six seven months,nothing was done. Then on 22.3.44,the Circle Officer,Chikodi Circle,made

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a demand for payment of the differential duty within ten days of the receipt of notice, failing which he threatened to recove the same as arrears of land Revenue,(ex.52).All orders passed and acts done after February 1944 were presumably under the new Act. By virtue of section 39 of Act No.I of 1944,all orders passed and acts done under the old Act "shall be deemed to have been passed and done under the new Act." It would appear from this that the first order passed by the Inspector on 15.8.43 for payment of differential duty "shall be deemed to have been passed under Act I of 1944.If the cause of action for the plff.'s suit is deemed to have arisen on the day the said order was passed then, the suit ought to have been instituted within six months from the date of the coming into force of Act No.I of 1944.The plaintiff purported to prefer an appeal against the order passed by the Inspector to the Asstt.Collector at Kolhapur on 28.4.1944(ex.53).The plaintiff was informed 'to put up a regular stamped Appeal xx after paying the differential duty against which the appeal is intended as required by sec. 189 of the Indian Sea Customs Act VIII of 1878,, the provisions of which have been extended to appeal under the Tobacco(Excise Duty) Act" (Vide ex.74 and rule 84 of the rules (Tobacco(excise duty) rules of 1943). Section 13 of Act No.X of 1945 provides that the Central Govt. may by notification in the official Gazette,declare that any of the provisions of the Sea Customs Act,1878, relating to appeals shall with such modifications and alterations as it may consider necessary or desirable be -- applicable in regard to like matters in respect of the duties on tobacco imposed by section 3. It appears that the Govt.had made applicable the provisions of section 189 of the Sea -- Customs Act in respect of the duty imposed on tobacco under sec.3 of Act No.X of 1943.

That section reads as follows:-"Where the decision or order appealed against relates to any duty or penalty leviable in respect of any goods, the owner of such goods, if desirous of appealing against such decision or order, shall,pending the appeal,deposit in the hands of the Customs-Collector at the post where the dispute arise,the amount demanded xx by the officer passing such decision or order. It would appear from

this that any appeal,without the deposit was untenable and,that was the reason why the Asstt.Collector suggested to the plff.to make the deposit first and then prefer a regular appeal.His advice however was not followed and plff.went on making applications to the Collector,Salt Revenue and the Central Government.The appeal and the revision to the Collector and Central Govt.respectively prior to the deposit were not in accordance with law and they were rightly rejected. Ultimately, the Asstt.Collector,at Kolhapur passed an order on 28.11.1944 for payment of the differential duty(ex.57).As plff.failed to simply with that order,coercive measures were taken and his tobacco worth thousands of rupees was detained and his registers seized. These steps were taken as purported to be taken under the new Act.Plff.paid the money on 5.12.1944 under protest.In the circumstances of the case,it was incumbent upon the plff.to file the suit within six months from the date of the detention of his tobacco and the seizure of his registers and or at least within six months from the date of the deposit. The subsequent applications made by the plff.to the Collector Salt Revenue, Bombay,on 26.2.1945(ex.58) and 5.6.1945(ex.60)and the petition in Revision to the Central Government on 6.6.1945(ex.62) were absolutely unnecessary in view of the fact that similar applications had already been rejected by the said authorities(exx.53,54,55 & 56). Plff.cannot be allowed to compute the period of limitation from the date of the rejection of his second petition by the Central Govt.The cause of action arose at the latest on the day the differential duty was paid under protest in consequence of taking off coercive measures. I am therefore inclined to hold that the suit is also barred by limitation under sec.40(2) of Act No.I of 1944.

I now take up the question of jurisdiction of the Civil courts to entertain the suit. In this connection sec.35 of Act I of 1944 was relied upon by the learned Government Pleader. Sec.35 reads as follows:- "Any person deeming himself aggrieved by any decision or order passed by a Central Excise Officer under this Act or the rules made thereunder may,within three months from the date of such decision or order appeal therefrom to the Central Board of Revenue,or in such cases as the Central Government directs,to any Central Excise Officer

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not inferior in rank to an Asstt.Collector of Central Excise and empowered in that behalf by the Central Govt.Such authority or officer may thereupon make such further inquiry and pass such order as he thinks fit,confirming,altering or annulling the decision or order appealed against----Every order passed in appeal under this sec.shall subject to the power of revision conferred by sec.36 be final.Sec.36 deals with applications for revision to the Central Govt.against the orders passed and decisions taken by the Central Board of Revenue or any Central Excise Officer.

It was argued by the learned pleader for the plff.that sec.35 of Act No.I of 1944 has no application to the present case which was governed by the earlier Act No.X of 1943 and rules made thereunder. Rules 86 and 87 of the tobacco Duty rules,1943,provided for appeals and revision. Rule 86 reads: 'An appeal shall lie to the Collector from any order by an officer subordinate to him. An appeal shall lie from any -- original order of the Collector to the Central Board of Revenue. No appeal shall lie from any appellable order of the Collector. The Central Govt. may review any order passed under the Act from which no appeal lies.' Rule 87 read:-No appeal under rule 86 shall be admitted unless received by the -- appellate authority within three months of the date of the order against which the appeal is made.'

The main difference between these rules and sec.35 of the New Act is in the introduction of a new clause (sub-sec. 2) in the said section of the said Act. That clause reads:- "Every order passed in appeal under this section shall,subject to the power of revision conferred by section 36,be final." These words are not to be found in rules 86 & 87 of the rules of 1943. The Collector was justified in rejecting the appeal made to him by the plaintiff to him by the plff.against the order passed by the Inspector on the ground that it was not in time. The period of three months is prescribed in both the provisions of law and admittedly,the plff.did not approach the higher authorities in time. However,all the applications made by the plff.to the Asstt.Collector,Collector and the Central Govt.were made after the new Act came into force,i.e.

28.2.1944.Under sec.39 of the new Act,all acts done and orders passed under the repealed Act shall be deemed to have been done or passed under the new Act. It would thus appear that the appeals and revision petitions made by the plff.are governed by the provisions of the new Act.

The learned Govt.Pleader relied upon the rulings in South Arcot V. Mark and Co.( I.L.R.1940 Mad.599)and the Secy.of State for India in Council V. Allu Jagannanam (I.L.R.1941 Mad.850),in support of his plea that the suit was not cognisable by civil courts. The first is a ruling of the Privy council and the second a decision of the Full Bench of the Madras High Court.In the first mentioned case, their Lordships of the Privy Council ~~xx~~ held:- A decision by an Asstt.Collector on the duty leviable on imported goods is a decision within the meaning of sec.188 of the Sea Customs Act and when the right of Revision therefrom conferred by sec.191 has been exercised and an order under that section is made. The order is final and the jurisdiction of the civil Courts is excluded", On page 616, the following words of Justice Willes in Wolverhampton New Water Works Company V. Hawkesford are quoted with approval:- "When the Statute enacts a liability not existing at common law and gives also a particular remedy for enforcing it ..... with respect to that class,it has always been held that the party must adopt the form of remedy given by the Statute". This decision was followed in the second Madras case mentioned above. The provisions of sec.188 of the Sea Customs Act and section 35 of Act No.I of 1944 are identical.

The plff.'s pleader's reply to this is that rule 79 of the Tobacco duty rules,1943 under which the differential duty was levied and demanded was subject to rule 85 and under the latter rule it was necessary that the increased rate of duty should have been adjudged by the Collector and not by an Inspector. The order of the Inspector,dated 15.8.1943 calling upon the plff. to pay duty at the rate of 6 annas per lb. was, it was submitted, illegal and ultra vires. In this case, the S.I. accepted the declaration made by the plff.that the tobacco in question was intended to be sold as chewing tobacco and accordingly ~~xx~~ levied the duty at the rate of one anna. Plff.was allowed to clear the goods from his bare-house. He paid the duty and

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after obtaining the necessary permits, exported the tobacco to Madgav and there sold it through Commission agents.After the tobacco was exported and probably sold, the Inspector passed an order on 15.6.43 without any intimation to the plff.and without giving him an opportunity to be heard that the tobacco was liable for excess duty, i.e. at the rate of 6 annas per lb. In my opinion, the contention of the plff. is right and must be upheld. Rule 79 reads:-When duty has been short levied through inadvertenance,error or misconstruction on the part of an officer ~~or~~ through misstatement as to quality on the part of the owner..... the person chargeable with the duty so short-levied...shall pay the deficiency ~~and~~ on demand being made within three months from the close of the month in respect of which the duty was levied."... Rule 85 reads:-'In every case in which under these rules,anything is liable to confiscation or increased rate of duty or any person is liable to penalty,such confiscation,increased duty'or penalty may be adjudged: (a) without limit by the Collector,(b)upto confiscation of goods not exceeding five hundred rupees in value,and -- imposition of penalty or increased duty not exceeding two hundred and fifty rupees,by such subordinate officers of Central Excises, as the CentralBoard of Revenue,may,from time to time,empowér in that behalf in virtue of their office".

Rule 79 does not say by whom the increased duty is to be adjudged.All that it says is that when the duty has been short-levied,the deficiency shall be payable on demand. It does not say by what authority the question of the deficiency or increased duty is to be adjudged.That is left to be provided by the later rule 85. In this case,the S.I. had levied the duty at the rate of one anna per lb.In the opinion of the Inspector,the tobacco in question was liable to duty at the rate of 6 annas.All at once,without assigning any reasons,without issuing notice to the plaintiff,and hearing him in his defence and without holding any inquiry and quite arbitrarily,passed an order that the plff.should pay differential duty of over Rs.12,000/-. I think the --

Inspector had no jurisdiction to pass such an order.All that he could have done in the circumstances of the case,was to make a report to the Collector and ask him to adjudicate under rule 85 of the Tobacco duty Rules of 1943. His action in passing the order on 15.8.43 for payment of an additional duty was illegal and ultra vires. Besides,the Inspector has not followed the principles of natural Justice. In Ganesh Mahadev Jamsandekar V.The Secy.of State for India in Council(43 Bom.221) it has been held that the jurisdiction of the civil court to hear the suit was not ousted,if it appeared that there had been no legal adjudication of the matter by the Collector in accordance with the provisions of the Sea Customs Act,1878.I am therefore inclined to the view that the jurisdiction of the civil court is not ousted.

The learned Govt.Pleader also relied upon the provisions of sec.40(1) of Act No.I of 1944 in support of his argument that the suit was not maintainable.Sec.40(1) reads as follows:-"No suit, shall lie against the Central Govt.or against any officer of the Crown in respect of any order passed in good faith or any act in good faith done or ordered to be done under this Act." I do not think that this provision of law applied to the facts of this case. Plff.in this suit is seeking to get back the money paid by him under protest.His case is that the tobacco cleared and exported by him was liable to duty at the rate of one anna per lb. and that the demand for excess duty was not justified by the Act or rules made thereunder.Sec.40(1) of Act No.I of 1944 seems to apply to suits for damages against the Central Govt.or any officer of the Crown for any orders passed or acts done in good faith. It has no application to the present suit in which a claim is made for refund of excess duty alleged to have been levied and recovered contrary to the provisions of the statute.

I record my findings as above upon the issues framed.As plff.fails on the question of limitation but succeeds on all the other questions,I do not think that it would be just and fair to saddle him with the costs of the defendant.I order that the parties should bear their respective costs of suit.

Order.

Suit dismissed.Parties to bear their respective costs.

Sd.M.S.Bagali.
29.9.1947. Civil Judge,S.D.Belgaum.

S Bel 1/46
20.10.47

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

First Appeal No.120 of 1948.

Sattepra Parsapra Kudichi of Ingli,
Taluka Chikodi, Dist. Belgaum — Appellant (or. Plff.)

Versus

The Central Government of India at Delhi. — Respondent (ori. Deft.)

Claim Rs.12,275-10-0 for Court fees and Advocate's Fees.

The appellant abovenamed being aggrieved by the decree dated 29-9-1947 of the Civil Judge, senior Division of Belgaum in Regular Civil Suit No.90 of 1946, begs to appeal among other grounds of objection to the decree appealed from :-

1. The decree is countrary to the law and facts of the case.

2. It was an error to hold that the suit was barred under Article 16 of the Limitation Act or Section 40(2) of Act I of 1944.

3. The lower court should have held that the cause of action accured on 28-6-1945 when the plaintiff received the letter from the Central Board of Revenue refusing to refund the amount in suit.

4. It was an order to hold that Act I of 1944 applied to the facts of the case.

5. The lower Court should have held that the rights of the plaintiff under the old act could not be taken away by the later enactment.

6. It was an error to hold that section 40(2) of Act I of 1944 was applicable to the plaintiff's claim.

7. The lower court failed to note that, as the amount claimed was not recovered either as revenue or arrears of revenue, by the revenue authorities, Article 16 of the Limitation Act had no application to the plaintiff's claim in suit.

8. It was an error to hold that the suit as originally framed for declaratin was incompetent.

9. The lower Court erred in compelling the defendant to amend his plaint as for a specific amount claimed and recover court fees, on that basis.

10. The proper court fee should have been Rs.18-12-0 only as for a declaration.

11. Proper presumptions and inferances were not drawn.

12. The lower court has made wrong presumptions and inferance.

13. Proper issues were not raised.

14. The order as to costs is wrong.

15. As the bar of Article 16 of the Limitation Act was not pleaded in the written statement, it was error to allow it to be raised at in the suit.

62 63



16. The Circulars issued by the Central Board of Revenue to the licensees and served upon all of them including the plaintiff, asking them to exhaust all their remedies under the Act, before resorting to a suit, clearly showed that the cause of action could only be the refusal to refund and that the Government was estopped from contending otherwise.

17. The contention under Article 16 was not even argued on behalf of the Government.

18. The plaintiff, as the contention was not taken in the written statement and the issue raised at a very late stage, and not even argued, was unable to produce the said circular and place it for consideration before the Court, and contended that Government was thereby estopped from recourse to Article 16.

Bombay,
19-10-1948.

Sd/- G.P.Murdeshwar,
M.S.Huttangadi,
Advocates for the Appellant.

MJV.8/12.

Exhibit No.90.

Court of the Civil Judge, Senior Division, Belgaum.

Regular Civil Suit No. 90 of 1946.

[redacted] Parsappa Kudichi, age 35, caste Lingayat, occupation trader, residing at Ingli, Tal. Chikodi, District Belgaum ... ... ... ... ... ... ... ... Plaintiff.

Vs.

1. The Central Government of India at Delhi, i.e. The Governor General in Council ... ... ... .. Defendant.

Received on 22.2.1946.

Registered on 22.2.46.

Claim Rs.12275/10/-for court-fee & jurisdiction.

Plaintiff sues as follows:-

1. A sum of Rs.3935/-and another sum of Rs.8340/10/-in all Rs.12275/10/- have been levied on 5.12.1944 from the plaintiff illegally by the Central Excise Officers, Chikodi Circle as per T.D. 1 notices Nos.18752/12 and 18753/13 dated 24.8.1943 by illegally detaining plaintiff' tobacco worth Rs.40,000/-and illegally removing plaintiff's registers maintained by him under the provisions of the Central Excises and Salt Act 1944. In order to release the Goods and the registers from such illegal and ultra vires attachment, the above said sums had to be deposited in the Chikodi Sub-Treasury by the plaintiff under protest and the Plaintiff sent a registered post card dated 5.12.1944 to the Range Officer, Ankli Range, in which the plff. intimated his protest in depositing the said amount and his intention to claim a refund of the said sum of Rs.12275/10/- from the Collector of Salt Revenue, Bombay. The plff. accordingly made an application for refund on 28.2.1945 to the Collector of Salt Revenue Bombay who however refused to do so in March 1945. There an illegal and ultra vires demand of the said sum of Rs.3935/-and Rs.8340/10/- in all Rs.12275/10/- in respect of two consignments chewing tobacco which were sent to Goa via Castle Rock by plff. on his payment of the legal and proper duty at one anna per lb. as demanded by the Sub-Inspector of Ankli, Central Excises under the provisions of the Tobacco(Excise Duty) Act 1943 under T.D.1 notices dated 2.7.1943 and 10.7.1943 issued by him to plff., and after plff. obtaining T.D.1 permits in respect of the same, authorising the plff. to consign the goods to Goa via Castle Rock. The said

65 64-47

Exhibit No.90.

In the court of [redacted] Judge, Senior Division, Belgaum.

Suit No. 90 of 1946.

1. Satteppa Parsappa [redacted], age 35, caste Lingayat, Occupation trader, residing at Ingli, Tal. Chikodi, District Belgaum ... ... ... ... ... ... ... ... Plaintiff.

Vs.

1. The Central Government of India at Delhi, i.e. The Governor General in Council ... ... ... .. Defendant.

Received on 22.2.1946.

Registered on 22.2.46.

Claim Rs.12275/10/-for court-fee & jurisdiction.

Plaintiff sues as follows:-

1. A sum of Rs.3935/-and another sum of Rs.8340/10/-in all Rs.12275/10/- have been levied on 5.12.1944 from the plaintiff illegally by the Central Excise Officers, Chikodi Circle as per T.D. 1 notices Nos.18752/12 and 18753/13 dated 24.8.1943 by illegally detaining plaintiff' tobacco worth Rs.40,000/-and illegally removing plaintiff's registers maintained by him under the provisions of the Central Excises and Salt Act 1944. In order to release the Goods and the registers from such illegal and ultra vires attachment, the above said sums had to be deposited in the Chikodi Sub-Treasury by the plaintiff under protest and the Plaintiff sent a registered post card dated 5.12.1944 to the Range Officer, Ankli Range, in which the plff. intimated his protest in depositing the said amount and his intention to claim a refund of the said sum of Rs.12275/10/- from the Collector of Salt Revenue, Bombay. The plff. accordingly made an application for refund on 28.2.1945 to the Collector of Salt Revenue, Bombay who however refused to do so in March 1945. There an illegal and ultra vires demand of the said sum of Rs.3935/-a Rs.8340/10/- in all Rs.12275/10/- in respect of two consignment chewing tobacco which were sent to Goa via Castle Rock by plff. on his payment of the legal and proper duty at one anna per lb. as demanded by the Sub-Inspector of Ankli, Central Excises under the provisions of the Tobacco(Excise Duty) Act 1943 under T.D.1 notice dated 2.7.1943 and 10.7.1943 issued by him to plff., and after plff obtaining T.D.1 permits in respect of the same, authorising the plff. to consign the goods to Goa via Castle Rock. The said

illegal and ultra vires demand was made as per T.D.1 notices dated 24.8.1943 for the 2nd time on the same goods after the goods tobacco xxx in the said consignments was sold and disposed off in Goa. It was admitted by the Central Excise Officers concerned both in the T.D.1 notices dated 2.7.1943 and 10.7.1943 demanding duty at one anna per lb. and the T.P.1 permits referred to above, that the tobacco in the two consignments was chewing. Nay, even in the T.D. 1 notices dated 24.8.1943 under which the sum of Rs.12275/10/- was demanded and recovered from plff. under coercion on 5.12.1944 it was not only admitted but also was not disputed that the tobacco in the said two consignments was chewing. Hence, under the Tobacco (Excise Duty) Act 1943, the demand and levy of duty at 6 annas per lb. for chewing tobacco was illegal and ultra vires, and the plff. being entitled to recover back the said amount by way of refund under Rule 79 of the Tobacco(Excise Duty) Rules 1943, plff. made an application dated 28.2.1945 for refund to the Collector of Salt Revenue Bombay who however refused to give the said refund in his order No.T.Ex.3-39/44 dated 7.3.1945. Being aggrieved by the said order of the said Collector, he appealed on his petition dated 6th June 1945 to the Central Board of Revenue declined to interfere by their communication dated 22.6.1945 which was recived by plff. on 28.6.1945. There has been no inadvertence, error or misconstruction on the part of plff. the S.I. of Ankli while demanding duty at one anna per lb. nor was there any misstatement on the part of the plff. as to the quantity of the tobacco in question. Hence Rule 79 of the Tobacco(Excise Duty) Rules 1943 did not apply to the two tobacco consignments in question xxxquestion in issuing T.D.1 notices dated 24.8.1943 afresh to plff. None of the Central Excise Officers that the said tobacco was other than chewing and was liable to duty at six annas per lb. Hence both the demand and levy of Rs.12275/10/- being illegal and ultra vires, the plff. is obliged to file this suit for a declaration that the plff. is entitled to obtain a refund of the said amount from the Collector of Salt Revenue Bombay.

2. Even supposing without admitting that Rule 79 applied the provisions of Rule 85 of the Tobacco(Excise Duty) Rules 1943 should have been complied and unless this was done, the S.I.,

Ankli had no jurisdiction to issue fresh T.D.1 notices dated 24.8.1943 to plff.and hence the said notice is illegal and ult vires.

3. The cause of action for this suit arose when the Central Board of Revenue refused to make a refund of Rs.12275/10/- by its communication dated 22nd June 1945 which was received by the plaintiff on 28.6.1945.

4. The amount for the purpose of court fee and jurisdiction and pleader's fees is Rs.12275/10/-.

5. This court has jurisdiction to try this suit as the cause of action arose within the special jurisdiction of this court.

6. Plaintiff therefore prays that as the levy of duty of Rs.12275/10/- is illegal and ultra vires plaintiff is entitled to obtain from the Collector of Salt Revenue Bombay,a refund of the said amount with costs of this suit and such relief to which plaintiff is entitled to.

7. A notice under Sec.80 C.P.C.is given todeft.and served on 20.12.1945.

This suit coming on this day for final hearing before M.S.Bagali,Esq.,C.J.,S.D.,in the presence of Messrs.B.H.Deshpande and S.G.Chandavarkar,Pleaders for plff.and the Dist.Govt.Pleader for deft.,it is hereby ordered that, suit dismissed parties to bear their respective costs.

Bill of costs.

| Particulars. | Plaintiff. | Defendant. |
|---|---|---|
| 1.Stamp for plaint. | 859-8-0 | 0-0-0. |
| 2. -do- for Vakalat. | 0-10-0 | 0-0-0. |
| 3. -do-for docts.produced. | 5-14-0 | ~~5-8-0~~ 5-10 |
| 4.Process fees. | 10-4-0. | 2-8-0 |
| 5.Witness Pot. | 46-8-0 | ~~44-14-0~~ 45- |
| 5.Pleader's fees. | 625-10-0. | 312-13-0. |
| Total | Rs.1548-6-0 | ~~367-11-0~~ 367- |
| Rejected Costs. (Stamps for production of docts.) .... | 1-4-0. | 3-2-0. |
| Grand total Rs. ---- | 1547-2-0. | ~~364-9-0~~ 362-13- |

Given under my hand and the seal of the court,this 2 day of September 1947.

Sd.G.R.Kulkarni.
Karkun.

Sd.B.H.Deshpande,
Pleader for Plff.

Sd.B.V.Jakati.
Dist.Govt.Pleader,
Pleader for deft.

Sd.M.S.Bagali.
10/10/1947
Civil Judge,S.D.Belgaum.

Copy applied for on 14-2-1951
Copy ready on 30-4-1951
Copy delivered on 28-6-1951
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Assistant Registrar.

APPEAL No. 120 OF 1948 FROM ORIGINAL DECREE.

Satteppa Parsappa Kudichi (Original Plaintiff) .. ... ... Appellant;

*versus*

The Central Government of India at Delhi (Original Defendant) .. Respondent.

Appeal against the decision of M. S. Bagali, Esquire, Civil Judge (Senior Division), at Belgaum in Civil Suit No. 90 of 1946.

M/s. G. P. Murdeshwar and U. S. Hattangadi, Advocates for the Appellant.

Mr. B. G. Thakore, the Additional Assistant Government Pleader, for the Respondent.

(CORAM:— Chagla, C.J. and Gajendragadkar, J.).

2nd February 1951.

*Oral Judgment* (*per Chagla, C. J.*).—This appeal arises out of a suit filed by the plaintiff to recover a sum of Rs. 12,275-10-0 from the Central Government of India and the suit arises under the following circumstances:—

The plaintiff is a tobacco merchant doing business at Ingli and on the 30th June 1943 he applied for an export permit to export certain pounds of tobacco to Goa. This tobacco was described as "Pendhi for chewing". The permission was granted and duty was levied on this tobacco at the rate of one anna per pound by the Sub-Inspector of Central Excises. The duty was paid by the plaintiff and the goods were cleared and exported to Goa. Another application was made on the 9th July 1943 for export of more tobacco which was also described as "Pendhi for chewing". Duty was levied in the sum of Rs. 1,668-2-0 also at the same rate, one anna per pound. The duty was paid and the goods were exported to Goa. On the 15th August 1943 the Inspector, Central Excise, made a demand upon the plaintiff for additional duty and the additional duty amounted to Rs. 12,275-10-0. This additional duty was based on the view taken by the Inspector that the duty was leviable at the rate of six annas per pound and not one anna per pound. On the 24th August 1943 the Sub-Inspector of Central Excises made a demand for this sum of Rs. 12,275-10-0. A formal notice of demand was sent on the 22nd March 1944 by the Circle Officer, Central Excise, and the notice stated that if the amount was not paid within ten days of the date of the notice steps would be taken for its recovery as arrears of land revenue under section 12 of the Tobacco Excise Duty Act, 1943. The plaintiff exhausted all the remedies that were open to him to go to the higher authorities protesting against the demand made by the revenue authorities and ultimately the Government of India dismissed his revisional application on the 27th October 1944. On the 30th November 1944 the Assistant Collector, Kolhapur, passed an order detaining 45520 lbs. of tobacco belonging to the plaintiff and directing that this tobacco should not be removed by the plaintiff until the sum of Rs. 12,275-10-0 was paid. On the 2nd December 1944 the plaintiff wrote to the Range Officer stating that as his tobacco had been detained in order to coerce him to accede to an illegal demand he was producing the money under protest, and in fact the payment was made on the 5th December 1944. The present suit for the recovery of the amount paid was filed on the 22nd February 1946. The learned trial Judge on merits held in favour of the plaintiff. He held that the defendant's action in recovering the differential duty was not justified by law. But he held that the suit was barred by limitation both under section 40(2) of Act I of 1944 and also under Art. 16 of the Limitation Act. In our opinion, as the suit is clearly barred under Art. 16 and as that decision is sufficient to dispose of this appeal it is unnecessary to consider the other findings arrived at by the learned Judge below.

The payment as I have pointed out was made on the 5th December 1944 and the suit has been filed on the 22nd February 1946 i.e. more than a year after the date of



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Superintendent, Decree Department. 27-4-1951.
Rs.as.ps.
Copying & Comparing charges. 6-6-0 Fols. 17
Total Rs. 6-6-0 (Total Rupees Six and annas six only)

payment, and even if the period of notice necessary under section 80 of the Civil Procedure Code is exempted, even so the suit is filed more than fourteen months after the 5th December 1944. If the suit falls under Art. 16 it is clearly barred because the period of limitation begins to run under that Article from the time when payment is made. Now, Art. 16 provides:—

> "Suits against Government to recover money paid under protest in satisfaction of a claim made by the revenue-authorities on account of arrears of revenue or on account of demands recoverable as such arrears."

This is clearly a suit to recover money from Government paid under protest; it is also in satisfaction of a claim made by revenue authorities, and the claim is also clearly made on account of arrears of revenue. The contention of Mr. Murdeshwar is that Art. 16 only applies when a claim is made by land revenue authorities on account of arrears due of land revenue or on account of demands recoverable as land revenue. Mr. Murdeshwar draws our attention to section 12 of the Tobacco (Excise Duty) Act, X of 1943. Section 12 deals with the machinery for the recovery of excise duty payable on tobacco and the section provides that the officer empowered by the Central Board of Revenue may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land-revenue. Now, Mr. Murdeshwar's contention is that it is only after such a certificate has been sent to the Collector and the Collector makes a demand for payment of arrears as if they were land revenue that Art. 16 comes into force. Mr. Murdehwar says that in this case no certificate was sent by any revenue officer to the Collector and the demand made is not for the payment of land revenue but is for the payment of arrears of excise duty which according to the authorities the plaintiff had failed to pay. We do not see why, when the Legislature has used plain and unmistakable language in Art. 16 we should give to the words used by the Legislature only a restricted meaning. "Arrears of revenue" does not mean only arrears of land revenue; every income derived by the State from its subjects is revenue and if any part of that revenue is not paid it becomes arrears of revenue and revenue authorities are authorities who are entrusted with the task of collecting revenue. In our opinion Art. 16 deals with two classes of cases. The first class of cases is when a claim is made on account of any sum which is due by the subject to the State and which sum has not been paid. The sum due may be in respect of land revenue, it may be in respect of excise revenue or any other kind of revenue. This class of cases deals with a direct demand made by a particular revenue authority claiming the payment of arrears of revenue from the subject. Art. 16 also deals with a second class of cases and that class is when the Legislature provides that a particular liability should be enforced by recovering it as if it was an arrear of revenue; although the liability itself may not be in respect of revenue it becomes recoverable as if it were arrears of revenue. We have various pieces of legislation where it is provided that a certain liability, if not discharged, may be recovered as if it were arrears of land revenue, and this class of cases would fall under the second part of Art. 16. But in this present case no question arises of any demand which is recoverable as arrears of revenue. In the present case we are concerned with a claim made on account of arrears of revenue itself and therefore it is with the first part of Art. 16 that we are concerned in this case.

The other contention put forward by Mr. Murdeshwar is that if the order made by the revenue authorities is *ultra vires* then it is a nullity and the claim made pursuant to that order is also a nullity. There Mr. Murdeshwar is right and he is also right that if the order and the claim are both nullities it is not necessary for him formally to set aside the order of the revenue authorities or challenge the claim made by the revenue authorities. But this is not a suit for setting aside the order made by the revenue authority or for challenging the claim. This is a suit for recovering money, which money the plaintiff has paid under protest and which he has paid in satisfaction of a claim made by a revenue authority. Mr. Murdeshwar says that Art. 16 only deals with those cases where money is paid under protest in satisfaction of a valid claim. That obviously cannot be. Because it is only when a claim is disputed or challenged that the subject pays money under protest, and, therefore, Art. 16 can only deal with cases of disputed claims where money is paid under protest.

The further contention of Mr. Murdeshwar is that when an order is made by a revenue authority which is a nullity then the revenue authority is not acting as a revenue authority but is acting as a private person and, therefore, Art. 16 does not apply to that class of cases. We are unable to accept that contention as well; because however illegal the order may be, however *ultra vires* it may be, the order is made by a revenue authority, it is not made by a private person. When a decree is passed which

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is a nullity, it cannot be said that the Judge who passes it passed it in his private capacity and not as a Judge. Similarly, the status of the person who makes an order is not altered by reason of the fact that the order made by him was beyond his authority or was *ultra vires* or was void. He is acting in his capacity as the revenue authority and in acting so he may make an order which may be liable to challenge in a Court of law.

Therefore, in our opinion as the suit is filed beyond the time laid down in Art. 16 and as in our opinion Art. 16 applies to this suit, the suit is clearly barred by limitation and the learned Judge was right in coming to that conclusion.

The result is the appeal fails and is dismissed with costs.

By order of the Court,

Exd. by :— M. L. S.

(Signed) S. H. BELAVADI,

Deputy Registrar.

True Copy

For Deputy Registrar

The ~~27th~~ 30th day of April 1951.

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K. 112.

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|---|---|
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13 -3-1951.
Examined by
Read by

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V. P. P. sent by Regd. Post

D. D. Nadkarni.
Superintendent, D.J.D.
19-3-1951.

In the High Court of Judicature at Bombay.

Friday the 2nd day of February 1951.

Appeal No. 120 of 1948 from Original Decree.

Satteppa Parsappa Kudichi ..... ..... Appellant.
( Original Plaintiff ).

Versus

The Central Government of India at Delhi ... Respondent.
( Original Defendant ).

Claim Rs. 12,275-10-0 for court fee and Advocate's fees.

HIGH COURT APPELLATE SIDE BOMBAY CERTIFIED COPY

The plaintiff sued to recover a sum of Rs. 12,275-10-0 as refund illegally recovered from him by the Central Government of India.

The Original Suit No. 90 of 1946 was decided by the Civil Judge ( Senior Division ) of Belgaum who dismissed it, ordering parties to bear their respective costs.

An appeal has been admitted in the High Court from the decision of the lower court. Notice was ordered to issue by the Honourable Mr. Justice Gajendragadkar on the 2nd day of April 1948.

The grounds of objection to the decision appealed against are :-

1. The decree is contrary to the law and facts of the case.

2. It was an error to hold that the suit was barred under Article 16 of the Limitation Act or section 40(2) of Act I of 1944.

3. The lower court should have held that the cause of action accrued on 28th June 1945 when the plaintiff

received the letter from the Central Board of Revenue refusing to refund the amount.

4. It was an error to hold that Act I of 1944 applied to the facts of the case.

5. The lower court should have held that the rights of the plaintiff under the old act could not be taken away by the later enactment.

6. It was an error to hold that section 40(2) of Act I of 1944 was applicable to the plaintiff's claim.

7. The lower court failed to note that, as the amount claimed was not recovered either as revenue or arrears of revenue, by the revenue authorities, Article 16 of the Limitation Act had no application to the plaintiff's claim in suit.

8. It was an error to hold that the suit as originally framed for declaration was incompetent.

9. The lower court erred in compelling the defendant to amend his plaint as far as specific amount claimed and recover court fees on that basis.

10. The proper court fee should have been Rs. 18-12-0 only as for a declaration.

11. Proper presumptions and inferences were not drawn.

12. The lower court has made wrong presumptions and inferences .

13. Proper issues were not raised.

14. The order as to costs is wrong.

15. As the bar of article 16 of the Limitation Act was not pleaded in the written statement, it was an error to allow it to be raised at a very late stage in the suit.

16. The Circulars issued by the Central Board of Revenue to the licencees and served upon all of them including the plaintiff, asking them to exhaust all their remedies. under the Act before resorting to a suit, clearly showed that the cause of action could only be the refusal to refund and that the Government was estopped from contending otherwise.

17 . The contention under article 16 was not even argued on behalf of the Government.

18. The plaintiff, as the contention was not taken in the written statement and the issue at a very late stage, and not even argued , was unable to produce the said circular and place it for

74 75 145

consideration before the court, and contend that Government was thereby estopped from recourse to Article 16.

Coram :- Chagla C.J. and Gajendragadkar, J.

For the reasons stated in the accompanying judgment the Court confirms the decree of the lower court and dismisses the appeal with costs.

2nd February 1951. Sd. S.H. Belavadi.

Deputy Registrar.

Bill of Costs in the High Court.

| By the appellant. | Rs. As. Ps. |
|---|---|
| Stamps for Memorandum of Appeal. | 859-6-0 |
| Stamps for copies of decree and judgment. | 1-14-0 |
| Stamps for Vakalatnama. | 2-8-0 |
| Bhatta for process. | 5-0-0 |
| Sectioner's fee. | 27-2-0 |
| Advocate's fee. ( Double set ) | 625-8-4 |
| Printing charges. | 11-0-0 |
| Copying charges for preparing paper books. | 3-7-0 |
| Total | 1535-13-4 |

| By the respondent . | Rs. As. Ps. |
|---|---|
| Stamps for Vakalatnama The Govt. Pleader appears) | 0-0-0 |
| Advocate's fee | 312-12-2 |
| Total | 312-12-2 |

( Seal )

Sd. S.H. Belavadi.

Deputy Registrar.

The 2nd day of February 1951.

True Copy

for Deputy Registrar.

The 19th day of March 1951